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1 P R O C E E D I N G S

2 HEARING OFFICER FAY: Good morning. I
3 am Gary Fay, and I'm a Hearing Officer at the
4 California Energy Commission, and this is a
5 Committee Conference to receive comments on the
6 Commission's -- or the Committee's Proposed
7 Decision on the Moss Landing Power Plant Project.

8 To my right is Chairman William Keese,
9 Chairman of the Energy Commission and Presiding
10 Member on the Moss Landing Power Plant Committee.
11 And to -- or left, rather. And to his left is
12 Cynthia Praul, his Advisor. To my right, at this
13 next table, is Jeff Ogata, Staff Counsel for the
14 Staff of the Energy Commission. The Staff is an
15 independent party, and does not have access to the
16 Committee any more than the Applicant does.

17 And to our far left, the table to the
18 left, is -- are the representatives of Duke
19 Energy, and Duke is the developer proposing this
20 power plant. At the right side of the table is
21 Chris Ellison, attorney, then Mark Seedall, with
22 the project. Wayne Hoffman, environmental advisor
23 to the project.

24 And to the far left, Debi is our court
25 reporter, and she's the most important person here

1 today, so if she doesn't hear you, you don't
2 exist. Keep that in mind, and please speak into
3 the microphones when you make your comments. We
4 need to have your name first, and then want to
5 hear your comment. Since Debi is transcribing
6 this, we'll be sure to get your remarks in the
7 record. And if you'd just come up to the podium
8 here. There's also a traveling mic if you're
9 unable to make it up to the podium, we can be sure
10 that you are on microphone. If you're not on
11 microphone, if you just call out something from
12 the audience, it will not be part of the record,
13 and the comment will be lost. So you really need
14 to be on mic.

15 A few preliminary measures. I'd like to
16 stress that remarks today, as per the notice that
17 we put out in the front of the Presiding Member's
18 Proposed Decision -- by the way, we call that the
19 PMPD, so you might hear reference to that alphabet
20 soup frequently -- the notice in the PMPD stated
21 that the purpose of today's Committee Conference
22 is to take comments on that document. So if you
23 make your comments, please make them in terms of
24 the document.

25 If you have something general about you

1 just don't like the power plant, if you don't have
2 a way of putting it in terms of the document, we'd
3 really rather you -- you just send it in. The
4 comment period is open until September 28th, 3:00
5 p.m. And your comments will be considered that
6 way, just the same as if you make them here. The
7 reason we came down is just a convenience to the
8 community so that they could come and make oral
9 comments if they chose not to submit written ones.

10 The way we'll proceed today is we'll
11 hear the Applicant's comments, if they have any in
12 addition to the ones that they've filed in
13 writing. Now, over on the table where Jeff is,
14 I've got copies of the notice of today's hearing,
15 and the next stack is the Applicant's comments,
16 and then a stack of Staff comments. So if you're
17 interested in what these parties had to say about
18 the PMPD, you might want to look at -- at the
19 documents they submitted, because they won't be
20 repeating themselves on the record.

21 Then after hearing from these two
22 parties, we'll normally go the agencies and hear
23 their comments, and then members of the public.
24 If anybody has a time constraint problem, please
25 let Roberta Mendonca know. She's courteously

1 identified herself by wearing crutches today, and
2 so you can't miss her.

3 And I wanted to stress that the comment
4 period is a 30-day comment period. Since the
5 document was published on August 29th, September
6 28th is the close of that 30-day comment period.

7 Duke has provided some refreshments.
8 There's doughnuts and coffee and orange juice in
9 the back, so avail yourself of that.

10 I do need to stress, though, that there
11 is no fresh water available in the Moss Landing
12 area. And so if you don't get it out of a bottle,
13 or a cooler, don't drink it. They're under a
14 boiled water only order, and so don't use the
15 drinking fountains or anything like that.

16 The restrooms are in the hall, just
17 outside the door. There's two restrooms. But
18 don't use the drinking fountain.

19 And in addition, please do not go into
20 the research library, which is at the end of the
21 hall here. It's not a public library. It's for
22 research at the Marine Lab, and they ask that the
23 public not go in there.

24 Are there any preliminary comments or
25 questions before we get started?

1 Roberta has a sign-up sheet on the -- on
2 the clipboard right at the edge of the table. So
3 please sign up, if you will. And Mr. Dillard,
4 yes.

5 (Comment from the audience.)

6 HEARING OFFICER FAY: I'm sorry, what?

7 (Comment from the audience.)

8 HEARING OFFICER FAY: Well, at the end
9 we'll certainly take any public comment you want
10 to make. But what I laid out was the schedule
11 we'd like to follow for getting the comments. If
12 you -- if you have some general comment, that will
13 be taken at the end, certainly.

14 Yes, sir.

15 (Comment from the audience.)

16 HEARING OFFICER FAY: Yes, and I think
17 we have -- are you Hal Shores?

18 One party, Mr. Shores, indicated he had
19 to leave by 10:00 o'clock.

20 So if there's nothing further, then I'd
21 like to move to Mr. Ellison and ask if he has any
22 additional comments on the PMPD.

23 Oh, excuse me, Chris, before we start.

24 I also wanted to call the public's attention to a
25 mistake in the Monterey Herald. There was an

1 article this morning on page B2, about today's
2 hearing. And the first sentence is certainly
3 correct. After that, there's a number of problems
4 with some of the statements in the article. The
5 most serious one that I think people should be
6 aware of is it indicates that the Energy
7 Commission will -- will not consider a final
8 decision on this case until after the Regional
9 Water Quality Control Board has acted, and that
10 their hearing is postponed, or being continued
11 until October 27th.

12 That is not the case. The Energy
13 Commission will -- right now plans to take up the
14 decision on the Moss Landing Power Plant before
15 the full Commission on October 25th. In the past,
16 most power plant decisions have been issued by the
17 Energy Commission before the NPDES permit has bene
18 issued by a Regional Water Quality Control Board.
19 So this is consistent with what's happened in most
20 power plant licensing cases. And the -- the
21 Energy Commission has -- has always assumed that
22 the Water Board is implementing a federal permit,
23 and therefore if their -- if the Water Board's
24 conditions are different from those of the Energy
25 Commission, then the Water Board's conditions

1 would control. And to the extent there's an
2 inconsistency, the Applicant would have to come
3 back to the Energy Commission and get a
4 modification to conform the Commission license to
5 that of the NPDES permit, National Pollution
6 Discharge Elimination System permit.

7 I just wanted to correct that, because I
8 don't want anybody to think that the Energy
9 Commission won't be considering this on October
10 25th.

11 PRESIDING MEMBER KEESE: I would mention
12 also that -- dealing with identity crises here,
13 Commissioner Michal Moore spells his name M-i-c-h-
14 a-l, and prefers it to be spelled that way. And
15 if -- if Mr. Akeman likes to think that he's the
16 Chair of this Committee, that's just fine. I
17 spell my name a little differently, and
18 Commissioner Moore is the Second Member of this
19 Committee.

20 HEARING OFFICER FAY: Commissioner Moore
21 couldn't be here today because he's ill, but he
22 will have access to all the remarks because it'll
23 be transcribed. And by the way, I believe the
24 transcript will be posted on the Commission's Web
25 site, so if you need to consult that, you can

1 consult the Web page for the Energy Commission in
2 -- in a week, or ten days or two weeks, something
3 like that.

4 All right. Now, I'd like to move to Mr.
5 Ellison.

6 MR. ELLISON: Thank you, Mr. Fay,
7 Chairman Keese. I'm going to keep my remarks very
8 brief. Duke has filed written comments, and I'm
9 not going to repeat them.

10 I just want to say a couple of things
11 with respect to one issue, where we have made a
12 suggested change to the PMPD that the Staff does
13 not concur with. Our understanding is the Staff
14 concurs with all of our suggested changes except
15 for the one I'm going to discuss, and we concur
16 with all of their suggested changes except for the
17 one I'm going to discuss.

18 And so I'm not going to discuss those
19 written comments where there's no disagreement
20 with the Staff.

21 Let me begin, though, by -- by
22 acknowledging that I was just handed some comments
23 from the California Coastal Commission, and let me
24 just say that I haven't had a chance to read them,
25 and so I won't be commenting on them now. If Duke

1 has any comments to make with respect to those, we
2 will file them in writing prior to the 28th. But
3 I literally don't know what they say. And so the
4 fact that I'm not responding to those comments now
5 should not be taken to -- to say anything about
6 Duke's position with respect to them.

7 Let me begin, in terms of the comments
8 that we have seen in the PMPD, by thanking the
9 Committee for the hard work that has gone into
10 this Proposed Decision. Duke was very impressed
11 with the Proposed Decision. We think it does very
12 accurately reflect the evidence that's been
13 presented to the Committee and the Commission in
14 the hearings that were conducted earlier this
15 year, and we have very few proposed changes to the
16 decision.

17 So thank you, Mr. Fay, and Chairman
18 Keese, for the hard work that's gone into what we
19 think is a very good decision.

20 The one area where we have suggested a
21 change, where there is a disagreement with the
22 Staff, concerns Condition Air Quality 54, which is
23 a condition that addresses the installation of
24 soot filters on the construction equipment,
25 bulldozers and that sort of thing, that would be

1 used on the project.

2 I want to emphasize that Duke's -- well,
3 let me characterize what the disagreement is. The
4 Staff position and the position in the PMPD is
5 that Duke should install on a temporary basis
6 these soot filters on the construction equipment,
7 and that since Duke does not own this, the
8 construction equipment, it remove these filters
9 when they have completed their work at the site.

10 Duke's concern is not about the cost of
11 doing that. We had that concern in the hearings,
12 but we recognize the Commission's Proposed
13 Decision. The concern that Duke has is getting
14 the most value for the money that would be spent,
15 and the concern that we have is the California Air
16 Resources Board is developing a program for soot
17 filters on that kind of off road equipment. We
18 believe the Commission's Proposed Decision, while
19 well intended, is not consistent with what CARB is
20 developing.

21 We've had some conversations with CARB
22 on this subject, and believe that -- that they
23 concur with us on this, and recommend that the
24 Commission Staff and the Committee consult with
25 CARB on this issue.

1 The -- the differences between the CARB
2 program and what the Commission is proposing, in
3 brief, are twofold. One, CARB is looking for a
4 permanent installation of these soot filters, but,
5 more importantly, CARB recognizes that the soot
6 filters do not work effectively without the use of
7 low sulfur fuel oil, which is not -- or low
8 sulfur, not fuel oil -- low sulfur fuel for these
9 -- for this equipment.

10 The testimony in this record is, and it
11 is accurate, that that fuel is not yet available
12 in this area, and will not be available for the
13 equipment that will be used to construct this
14 project. And so the effectiveness of these
15 filters in this location, at this time, is subject
16 to question.

17 What CARB is developing is a program
18 that would require the installation on -- on this
19 equipment permanently, in conjunction with the
20 availability of low sulfur fuel for these -- for
21 these vehicles that ensures that the soot filters
22 will be effective.

23 So what we have proposed in lieu of the
24 Proposed Decision that we now have before us, is
25 that Duke would contribute to a mitigation fund

1 that would be used consistent with the CARB
2 program, to make permanent installations on
3 construction equipment that would be used at other
4 projects, including other Duke projects, perhaps
5 Morro Bay is a good example. And that those
6 installations would be used where there is the low
7 sulfur fuel available, and would be installed on a
8 permanent basis.

9 I won't say anymore about the issue at
10 this time. I think the record is quite good on
11 this question, and I would refer the Committee,
12 again, to the testimony that was presented in the
13 hearings.

14 Other than this issue, we have no
15 disagreements with the Staff's proposed changes to
16 the PMPD, and we again thank the Committee for its
17 hard work on these issues.

18 PRESIDING MEMBER KEESE: Mr. Ellison, in
19 your filing you suggest five units, for the
20 installation of soot filters on five?

21 MR. ELLISON: That is correct. The
22 permanent installation on five.

23 PRESIDING MEMBER KEESE: Is that --
24 where did the five come from?

25 MR. ELLISON: I believe, subject to

1 check, and our -- unfortunately, our air quality
2 consultant, Mr. Rubenstein, is on vacation and
3 couldn't be here today, so that's the reason for
4 my hesitation. But my understanding is that the
5 five was selected to be equivalent to the cost of
6 what the Energy Commission is proposing in its
7 decision now, as best we can estimate it.
8 Because, again, the concern here is -- is not so
9 much avoiding the cost of doing this, it's
10 ensuring that we get the most bang for the buck
11 from the money that's spent. And ensuring that
12 it's consistent with the CARB program.

13 So subject to check, that's my
14 understanding of how the five was selected.

15 PRESIDING MEMBER KEESE: Thank you.

16 HEARING OFFICER FAY: I neglected to
17 mention one thing on the schedule today. And that
18 is, I had told the Applicant that since they have
19 the burden of proof in this case, I wanted to give
20 them a chance at the end to make any final
21 comments, if they wished. So -- so we will accord
22 Duke that opportunity at the end.

23 Mr. Ogata, for the Staff.

24 MR. OGATA: Thank you, Mr. Fay.

25 Good morning, Chairman Keese, members of

1 the public.

2 Staff has also filed written comments on
3 the PMPD, and I also don't want to go into detail
4 on those. Most of our comments are of two kinds;
5 basically just making some corrections, some
6 typographical errors, and make some suggestions
7 for changes in those things.

8 Secondly, the way that the Staff
9 typically writes conditions is that we normally
10 put timeframes into what's called a verification,
11 because once those timeframes are locked in to a
12 condition, pursuant to our rules those timeframes
13 become basically etched in stone. And if a
14 Applicant misses any of those timeframes, then
15 they are in violation of the condition, and if
16 they want to change that, we have to go back to
17 the full Commission to make changes to those
18 timeframes.

19 So in order to allow a little
20 flexibility for -- for some possibility of some
21 missed dates, we try to move all those into the
22 verification. And so for some reason, a number of
23 those timeframes were in the Staff's original
24 proposed conditions, and we're proposing that most
25 of those timeframes should be taken out of

1 conditions and put into verification, instead.

2 The Applicant has proposed in AQ-4, more
3 detailed language than what Staff's proposed
4 conditions are, and we appreciate that, and we
5 accept those. That language in there was
6 contemplated by Staff, but, again, to allow some
7 flexibility and to not lock in a particular set of
8 requirements. We had kind of a more general
9 statement about what this plan should include, and
10 the Applicant has detailed that, so since they're
11 willing to propose that we'll gladly accept that.

12 HEARING OFFICER FAY: That's AQ-4?

13 MR. OGATA: AQ-4.

14 On AQ-41, I actually have a question of
15 Duke. Staff's proposal, again, removes a number
16 of the timeframes in that condition, and also
17 changes, or proposes to delete the last sentence,
18 which describes notification to the air district.
19 And I've noticed that in the Applicant's proposal,
20 all the language remains intact. So I just wanted
21 to ask whether or not the Applicant would prefer
22 to keep those timeframes in.

23 Again, we like to take those timeframes,
24 put them into verification, because they do become
25 binding. But this may be a condition where --

1 where that may be appropriate, and so I just
2 wanted to check with the Applicant to see if they
3 had any feelings about that.

4 And then, finally, as Mr. Ellison
5 pointed out, Staff disagrees with the Applicant on
6 Air Quality Condition 54. I think this is one of
7 those situations where -- where we have also had
8 discussions with the Air Resources Board, and
9 maybe not too surprisingly, unfortunately we also
10 have come to a different conclusion, based upon
11 what they told us.

12 We believe that the Air Resources Board
13 acknowledges that the soot filters will work a lot
14 better with low sulfur diesel fuel. However, they
15 still will work even in the absence of that fuel.
16 And the efficiency may not be as great, but there
17 still is some removal. And so we believe that
18 it's still important to use the -- all the
19 appropriate mitigation, all the feasible
20 mitigation we can, to address the PM10 problem.
21 So we would encourage the Committee to maintain
22 that condition.

23 Also, we don't believe that the proposal
24 by Duke Energy is necessarily appropriate, in the
25 sense that they are proposing that these filters

1 be placed on a project that's different than Moss
2 Landing. And we believe since the impact is here,
3 the mitigation ought to be here.

4 There are some concerns and questions
5 about whether or not it would be appropriate to
6 put these filters on something like Morro Bay.
7 For one thing, as you know, there's yet to be an
8 Application for Certification with the Commission
9 on Morro Bay, so even though we understand it's in
10 the works, it really isn't even before us at this
11 point. And then there's certainly the issue of
12 whether or not it will actually be certified, and
13 if it's not certified, then we won't have that
14 mitigation, as well.

15 So I think there are a number of
16 concerns that we have about moving the mitigation
17 and changing it in the way that Duke proposes.
18 So, again, we would encourage the Committee to
19 maintain the current condition as it is.

20 PRESIDING MEMBER KEESE: Mr. Ogata, is
21 that -- the condition that was proposed and is in
22 the PMPD, essentially concurred with Staff's
23 recommendation in this regard. Duke has proposed
24 the alternative. Are you -- are you suggesting
25 that the -- the tie-in to the Morro Bay power

1 plant is what is of concern? Or --

2 MR. OGATA: Well, it's --

3 PRESIDING MEMBER KEESE: -- are you
4 suggesting that Duke's -- are you rejecting Duke's
5 suggestion that because this is -- that we're
6 ahead of the curve -- Duke is suggesting that
7 Staff was ahead of the curve here, and that here
8 is a better way of doing what the Air Resources
9 Board intends to do in the future. Are you
10 rejecting that, also?

11 MR. OGATA: Yes, Chairman Keese, we are.
12 We believe that -- that this is not a science
13 project, that Staff actually has looked at this
14 issue very seriously. We believe that it's not
15 infeasible, it's not something that would be just
16 basically off the wall. I mean, we -- we believe
17 that it is appropriate mitigation. It will work.
18 And certainly there are some concerns about it,
19 but we -- we do reject the notion that this --
20 that the installation of soot filters would be,
21 you know, entirely inappropriate.

22 PRESIDING MEMBER KEESE: Well, I guess I
23 -- and I think that the PMPD reflected that
24 position. Duke has suggested that a better way of
25 complying with the ARB program would be for the

1 permanent installation of five units.

2 Now, let me disconnect Morro Bay from
3 that. Let -- if the mitigation was the permanent
4 installation of five units when the fuel becomes
5 available, does Staff reject that idea?

6 MR. OGATA: For this case, we would,
7 because we believe the mitigation needs to be done
8 concurrently in time with the impacts. And at
9 this point, the proposal seems to indicate that
10 the low sulfur fuel is not going to be available
11 in time for this project.

12 PRESIDING MEMBER KEESE: And Staff
13 concurs with that, that it is unlikely that the
14 low sulfur fuel will be available?

15 MR. OGATA: I believe so.

16 PRESIDING MEMBER KEESE: That's what I
17 read.

18 MR. OGATA: I believe that's still true.
19 Yes.

20 PRESIDING MEMBER KEESE: Okay. Thank
21 you.

22 MS. PRAUL: I have some questions. Can
23 someone describe what's in the record of this
24 proceeding with respect to the Air Resources
25 Board's own testimony or statements on this issue?

1 MR. ELLISON: My recollection, Ms.
2 Praul, is that the Air Resources Board has not
3 submitted anything to the Commission that is a
4 part of this record. The conversations that I
5 referred to, I can give you the particular
6 individual. Our -- our air quality consultant
7 spoke with a Michael Tollstrup, who is the
8 Supervisor of the Stationary Source Division
9 project support division at CARB. They are the
10 folks who are implementing this program.

11 Perhaps one way of resolving this issue
12 would be to get CARB to comment prior to the 28th.
13 We would encourage that, because one of the
14 concerns that we have is consistency with the CARB
15 program, and consistency with their findings about
16 the effectiveness of these filters in the absence
17 of low sulfur diesel fuel.

18 The -- I want to emphasize two other
19 things. We did not propose Morro Bay because of
20 -- of trying in any way to, you know, shift
21 something from one project to the other. It's
22 simply that's a project that we have direct
23 control over, and if the Commission was concerned
24 about that issue we can certainly -- we just
25 wanted to make clear by proposing Morro Bay that

1 we were not trying to escape a Duke obligation.
2 Rather, that the concern is related to the
3 availability of the fuel and the effectiveness of
4 these temporary installations in the absence of --
5 of such fuel.

6 If the Committee wanted to require the
7 installation on some other local project once the
8 fuel becomes available, Duke would not have a
9 concern in doing it that way, as well.

10 Again, it's really just an issue of
11 consistency with the CARB programs and its
12 findings on the effectiveness of these filters in
13 the absence of a fuel that drives our position.

14 MS. PRAUL: Could either of you describe
15 what the local Air Pollution Control District's
16 position is on this issue, in the record?

17 MR. OGATA: I'm not aware of a position
18 taken by the district on that issue. And I don't
19 believe anyone from the district is here.

20 (Inaudible asides.)

21 MR. OGATA: Yeah, I don't recall that
22 the district has commented on the soot filters at
23 all.

24 MS. PRAUL: Okay.

25 MR. OGATA: In this record.

1 MS. PRAUL: I guess one last question.
2 I know we don't have our air quality experts here,
3 and I guess I didn't understand this issue well
4 enough at the time that we were going through it
5 to ask the questions then. But could either of
6 you characterize the nature of the PM10 attainment
7 status for this district, for this air quality
8 basin, that drives the need for this requirement,
9 and how does that compare to other places in the
10 state where this requirement for soot filters has
11 been put into place?

12 MR. ELLISON: Let me say two things, Ms.
13 Praul. One is we would be happy to provide to
14 you, just to make sure that I get it right, I
15 would rather provide you in writing prior to the
16 28th confirmation of the exact attainment status
17 with respect to PM10. I think I know the answer,
18 but I don't want to speculate.

19 But let me say this. My understanding,
20 and I believe Mr. Ogata will agree with this, is
21 that this issue arises from the Energy
22 Commission's enforcement of CEQA, and not from the
23 enforcement of any district rule or Clean Air Act
24 requirement.

25 And so I think that the attainment

1 status with respect to PM10 may have some bearing
2 on the issue in a CEQA sense, but I don't think
3 we're being -- I don't think there's an issue here
4 of compliance or non-compliance with the district
5 rules or Clean Air Act.

6 MS. PRAUL: I guess my last question
7 maybe is to Gary, which is procedurally, how do we
8 acquire additional information on this question
9 without opening the record, and yet still be able
10 to make a reasoned decision based on whatever
11 supplemental comments come in before the 28th?

12 HEARING OFFICER FAY: The supplemental
13 comments can certainly inform the record, but if
14 the Committee feels that it does not have
15 sufficient evidence to make the findings that it
16 needs to make, then it will have to reopen the
17 record and take new evidence.

18 MR. ELLISON: Actually, Mr. Fay, I have
19 just been handed a copy of the Final Determination
20 of Compliance, which I believe answers your
21 question, Ms. Praul, so let me just refer you to
22 that.

23 Page 9, there is a table regarding the
24 status with respect to various pollutants of this
25 district, and the statement appears in the

1 beginning of the first paragraph, this table above
2 identifies that the project emission
3 concentrations, when combined with the backdraft
4 concentrations, do not exceed the ambient air
5 quality standards, with the exception of the state
6 PM10 -- state PM10 standard.

7 PRESIDING MEMBER KEESE: Let me just --
8 I would appreciate both Staff and the Applicant
9 clarifying by the 28th. We have indicated in the
10 PMPD that -- that we are willing to go beyond the
11 requirements suggested by either the ARB or the
12 local district, because neither, as I understood
13 it, neither of them have requested that we add
14 soot filters.

15 I am -- I have a concern about doing
16 something that's inconsistent with policies of
17 either of those agencies. So I would appreciate a
18 clarification, if it would be possible, by the
19 28th. And it would be -- it would be nice if the
20 Air Resources Board could do the same.

21 MR. ELLISON: Mr. Chairman, with your
22 indulgence, I really, in order to not be accused
23 of taking something out of context, let me read
24 the rest of the paragraph, of the sentence I just
25 read from.

1 It goes on to say, although the table
2 identifies an exceedence of the state PM10
3 standard, the district has determined that this
4 project will not cause or contribute to the
5 violation of an ambient air quality standard. The
6 basis for this determination is the fact that
7 existing PM10 concentrations already exceed the
8 standard, and the fact that the facility is fully
9 offsetting PM10 emission increases via the use of
10 banked emissions. Therefore, the project as
11 proposed complies with the ambient air quality
12 standard provisions of Rule 207.

13 That paragraph addresses the status of
14 the project without regard to the soot filter
15 issue.

16 CHAIRMAN KEESE: Thank you.

17 HEARING OFFICER FAY: If I just note for
18 the record, it might help people here with a copy
19 of the PMPD, page 90 describes the current status
20 of PM10 in this area. And page 93 has the
21 discussion about soot filters.

22 I'm sorry. Ms. Praul.

23 She just wants to be sure that anybody
24 that cares about this issue does voice their
25 comments.

1 What I'd like to do now, normally we
2 take the agencies, but one fellow has to leave by
3 10:00 o'clock, so I'd like to ask Mr. Shores if
4 he'd like to make his comments now.

5 MR. SHORES: Thank you. Thank you for
6 this opportunity to address your Commission.

7 My concern is not particularly water,
8 even though I am concerned about water, or air.
9 My concern is about people. I'd like to draw your
10 attention to page 269 of the report, which
11 basically in the last sentence, under socio-
12 economic concerns, number C, it says, socio-
13 economic impacts are considered significant if a
14 large influx of non-resident workers and
15 dependents move to the project area, increasing
16 demand for community resources that are not
17 readily available.

18 And then on the next page, it's at the
19 very top of the page, it starts with the sentence,
20 the evidence is undisputed that a sufficient
21 workforce is available locally to staff various
22 construction positions. Therefore, no temporary
23 or permanent relocation of workers is necessary
24 for the project construction.

25 The conclusion of that section, there

1 are three points that they make. The Moss Landing
2 Power Plant will draw primarily from local labor
3 forces from Monterey, Santa Cruz, San Benito
4 Counties, for construction and operation. The
5 project will not cause an influx of significant
6 numbers of construction or operation workers in
7 the local area. The proposed project is not
8 likely to have a significant adverse effect on
9 traditional socio-economic considerations,
10 including employment, housing, schools, medical,
11 et cetera.

12 My concern is this, is I'm a residential
13 real estate developer, and I bought some property
14 18 months ago on Salinas Road. The property
15 contains a travel trailer park, and people who are
16 working currently at the plant are living at our
17 parcel, at our park. I have a letter from one of
18 the workers that says please be advised that I've
19 recently become aware of somewhat alarming
20 situation. It has come to my attention that a
21 zoning change may put into place causing the
22 complete or partial closing of Loma Linda Travel
23 Park at 890 Salinas Road, Watsonville.

24 Duke Energy and Moss Landing Power Plant
25 is in the early stages of major construction

1 project, and will be employing several hundred
2 extra people over the period of the next couple of
3 years. The majority of these people will be
4 temporary, many of whom travel and live in
5 recreation vehicles. Loma Linda has been the home
6 to temporary construction workers for many years,
7 and the closing of this park would cause an undue
8 hardship for all those people, including myself.

9 Moss Landing Power Plant will also have
10 repairs and maintenance jobs requiring expertise
11 of temporary personnel. Therefore, I would
12 strongly urge your reconsideration before Loma
13 Linda Travel Park is closed.

14 That was written on August 22nd, to the
15 Board of Supervisors. On the 29th, the Board of
16 Supervisors approved an extension of my tentative
17 map for 18 houses, but they indicated they want
18 the park closed by October 1st.

19 The workers that are at our -- our
20 establishment in the park are on a day to day
21 notice, basically. I have a list of almost 40
22 workers who have signed a request. Let me read
23 what they say on this petition.

24 We, the undersigned, agree that the
25 following are our individual feelings, beliefs,

1 and wishes. We are currently residents of Loma
2 Linda RV Park. We believe Loma Linda RV Park is
3 an acceptable, clean, quiet, safe park, operating
4 healthfully and not being a public nuisance. We
5 believe the park is meeting a community need, our
6 need for housing. We are happy that the park is
7 -- we are unhappy that the park is being shut down
8 by the County Board of Supervisors. We want the
9 Board of Supervisors to stop oppressing us, to
10 stop their efforts to shut down the park.

11 We petition the Board of Supervisors to
12 do whatever is necessary to change county
13 regulations so that this park will be considered
14 in compliance with county ordinance.

15 And then it's signed by a number of the
16 residents.

17 My reason for being here is just to
18 simply say this is a dilemma, and I'm in the
19 middle of it. Basically, I have given notice to
20 the occupants of the park that they have to be out
21 by September 30th. I meet with the Board of
22 Supervisors next Tuesday, and without any support
23 from other areas saying that let's take a hard
24 look at this, and give some relief in this study,
25 we will have to give the legal notices to evict

1 all of the people that are here.

2 My additional comments were written in
3 the middle of the night, so forgive me if they
4 kind of rattle a little bit.

5 Are we fiddling while Rome burns?
6 Doesn't the right hand know what the left hand is
7 doing? Didn't the County of Monterey meet with
8 Duke Energy to try to mitigate the impacts? Who
9 was asleep at the switch when this expansion was
10 contemplated? Who builds or retrofits power
11 plants? Steamfitters, boilermakers, and many
12 other trades. How many boilermakers and
13 steamfitters in Monterey County? The nearest
14 local is in Pittsburg, 100 miles away. How many
15 of these people will be needed for this retrofit,
16 100, 200, maybe 300.

17 Will they commute to the power plant
18 from their homes in the San Francisco Bay Area.
19 Will they stay in hotels or motels, or will they
20 stay in travel parks? There is no availability in
21 travel parks in our area. I am told that workers
22 get \$28 a day per diem. How far will that go to
23 meet their expenses while they're here?

24 It's a given that we need to produce
25 more energy to meet the growing -- growing

1 demands. Will this be done without qualified
2 workers? Absolutely no. The workers are crucial
3 for this endeavor. Why would anyone lay a
4 hardship on these essential people. Not making a
5 special effort to mitigate their housing needs is
6 a cruel hoax.

7 We need to declare a state of emergency.
8 We need to deal with this crisis immediately. We
9 don't have the luxury of taking comments today and
10 deliberating on them in the weeks to come, to see
11 -- to have these needs worked out. We need a
12 forum to form a task force to deal with the
13 dilemma, a clearing house that searches out
14 solutions for these workers' housing needs.

15 If we don't speak to these issues, the
16 workers by default will be forced to commute great
17 distances already on clogged roads. Why not be a
18 friend to the worker and do everything possible to
19 mitigate this otherwise hardship. How many of us
20 are forced -- faced with the option of commuting
21 two hours each way to work and from work, or being
22 away from your family for four to five days each
23 week?

24 This is a serious matter that needs to
25 be addressed now, preferably before next Tuesday.

1 Please do what is right.

2 I appreciate the opportunity to speak.

3 HEARING OFFICER FAY: Thank you, Mr.
4 Shores.

5 I'd just like to note that the Energy
6 Commission does not, as I'm sure you're aware,
7 have direct jurisdiction over housing decisions at
8 the local level, only of licensing of power
9 plants. However, the Staff does work with the
10 locals extensively during the siting process, and
11 I'd like to direct Staff to communicate with our
12 socio-economics expert and have some communication
13 with the county to be sure that they're aware of
14 these concerns.

15 Okay. We have another request with time
16 constraints that -- that is a little bit later, so
17 what I'd like to do is we only have two agencies
18 to hear from. I'd like to move ahead. If we
19 don't conclude both agencies by 11:00 o'clock,
20 then I'm going to be sure to take Mr. Dilworth so
21 he can meet his schedule.

22 Michael Bowen is the next one, from the
23 Coastal Commission. Mr. Bowen's Commission has
24 submitted written comments, and I don't know if he
25 has those available, but they will be submitted to

1 the Energy Commission docket, I assume? Okay, go
2 ahead.

3 MR. BOWEN: Thank you, Chairman Keese,
4 Mr. Fay, and Staff.

5 Yesterday afternoon the Coastal
6 Commission staff submitted written comments to the
7 Energy Commission. I am going to try to
8 summarize, as briefly as possible, the essence of
9 the -- and substance of the letter.

10 The Coastal Commission staff wished to
11 express concern to the Energy Commission about the
12 Energy Commission's decision to decline to accept
13 the Coastal Commission's recommendations regarding
14 biological resources, and conditions of
15 certification.

16 We believe that this decision may be
17 based in part upon a misconception of the Energy
18 Commission's understanding of the law related to
19 the protection of water quality. But let me get
20 to the substance of our concern, first.

21 The Commission made a series of
22 recommendations. Among other things, we
23 recommended the formation and establishment of an
24 interagency mitigation team that would oversee
25 development and implementation of a specific, and

1 project specific, particularly, mitigation program
2 for the Elkhorn Slough, to directly mitigate
3 project impacts. This was declined by the Energy
4 Commission based on the grounds that it was
5 infeasible and environmentally less preferable.

6 In terms of the environmental
7 preferability, we continue to maintain that the
8 establishment of a interagency group that brings
9 the relative and respective expertises of various
10 agencies together, is not environmentally less
11 preferable. This is the manner in which the
12 strengths of the respective agencies can be
13 collectively assembled to properly delegate
14 mitigation measures where they are best
15 implemented.

16 With respect to the feasibility, though,
17 in relation to the water board, the Energy
18 Commission, if I understand it, and I -- if you
19 intend to correct me I will probably just defer to
20 our attorneys because I have to say that my
21 understanding is not as good as theirs -- but my
22 understanding is that the Energy Commission has
23 essentially asserted that the Energy Commission is
24 unable to take any action which would conflict
25 with the Regional Water Quality Control Board's

1 implementation of an NPDES permit.

2 Now, we understand the issuance of an
3 NPDES permit to be a state action, not a federal
4 action. And therefore, we believe that the Energy
5 Commission has the ability to place conditions of
6 certification on a license which are in exceedence
7 of those conditions which the Regional Water
8 Quality Control Board requires, so long as it does
9 not conflict with the Clean Water Act.

10 We also believe that this not preclude
11 the Applicant from complying with the terms of
12 their NPDES permit. The establishment of a
13 discrete, specific mitigation program is a
14 condition which the Applicant has to meet under
15 the Regional Water Quality Control Board's NPDES
16 permit. But that does not preclude, in our view,
17 the CEC from going beyond the terms of the NPDES
18 permit. And we urge the Energy Commission to
19 consider doing so, and to do so by adopting the
20 recommendations made July 24th of this year by the
21 Coastal Commission.

22 The Commission staff, and I would
23 venture to say the Commission, fully concur with
24 the belief expressed by the Energy Commission and
25 the Regional Water Quality Control Board, that

1 mitigation should not be unnecessarily delayed.
2 It is not our intention nor our desire to
3 establish a cumbersome bureaucratic process that
4 would ineffectively -- in effect, cripple the
5 timely establishment of a mitigation program.
6 However, we simply believe that involving the
7 appropriate resource agencies in the establishment
8 of a mitigation program will not effectively delay
9 the process. We think that their expertise is
10 useful, and should be utilized.

11 We also think that it is inappropriate
12 to entirely delegate the selection of mitigation
13 to a non-governmental organization, that there has
14 to be some sort of oversight and, in effect,
15 quality control to ensure that the actual
16 mitigation that is applied is -- has a specific
17 nexus and proportionality to the project's impact.

18 In conclusion, I would just like to
19 thank the Energy Commission and the Energy
20 Commission Staff for what I think has been a
21 tremendous opportunity to collaborate between our
22 two agencies. The Commission Staff has absolutely
23 bent over backwards to involve us in their
24 decision making process, to incorporate our
25 concerns. We appreciate it. We appreciate the

1 Energy Commission's sincere effort to involve the
2 public, and to distill a tremendously complex
3 proceeding into a succinct PMPD.

4 We have some comments on the PMPD.
5 Those are attached to our letter, and we ask that
6 you review them. And we also ask that a revised
7 PMPD be issued that incorporates, in addition to
8 our concerns outlined in our letter, the comments
9 that we have attached to our letter.

10 And lastly, I would like to thank the
11 Regional Board, the Energy Commission, and the
12 Applicant, for developing a process whereby good
13 science has I think been developed and entered
14 into the evidentiary record, reviewed by qualified
15 people, and incorporated in a public process that
16 allows for good decision making. We disagree with
17 some of the conclusions that have been reached in
18 the PMPD, based on that body of information, but
19 we don't think that detracts from the progress
20 that we've made so far in this proceeding.

21 And on a personal level, I would just
22 urge the Applicant and the Energy Commission to
23 try to foster this sort of collaborative approach.
24 I've seen it not work before, but in this
25 particular case it seems to have worked very well,

1 so far, and I thank -- I thank all of you for
2 making that happen.

3 And with that said, I will just leave
4 the letter and comments with you to review. And
5 our staff will be available for questions, should
6 you have any.

7 Thank you very much. Oh, and for the
8 record, that's Michael Bowen, with the Coastal
9 Commission.

10 HEARING OFFICER FAY: Thank you. Thank
11 you, Mr. Bowen.

12 I don't plan to respond to those
13 comments, but because this has been an ongoing
14 thing between two departments, I do want to make
15 clear what -- what is in the record and is in the
16 PMPD.

17 And I haven't had a chance to review the
18 Coastal Commission comments, but just by way of
19 clarification, at least from my point of view, the
20 Committee did certainly not reject the Coastal
21 Commission's comments. In fact, it was the
22 Committee's effort to include as many as possible,
23 and there were only two areas where we disagreed
24 and acknowledged that they are large areas. But
25 one was on whether the Coastal Commission should

1 be included as if it was a regulatory agency in
2 this case. And under state law, the Energy
3 Commission is the permitting agency for power
4 plants, not the Coastal Commission.

5 The Coastal Commission is specifically
6 included as part of the advisory team, along with
7 a number of other agencies, to advise the -- in
8 the formation of the mitigation plan, and it's
9 left to the permitting agencies, that is, the
10 Energy Commission and the Water Board, to make the
11 final call on what actions should be taken. But
12 the advisory team specifically includes the
13 Coastal Commission. And these decisions can't be
14 made without consultation with the advisory team.

15 We therefore did not reject the concept
16 of an interagency team. It's just a question who
17 makes the final call, and in our view a committee
18 of two is likely to be able to move more quickly
19 than a committee of perhaps a dozen or two dozen.

20 And we agree with your statement that
21 it's all right to exceed the requirements of the
22 Water Board. We have no problem doing that. As
23 you heard Commissioner Keese say, we may well
24 exceed the requirements of the Air Board regarding
25 soot filters, and that's not a problem. We feel

1 the same way about the NPDES permit. However, at
2 least as currently interpreted, we could not do
3 less than required in the NPDES permit. So
4 perhaps our disagreement is whether an
5 inconsistency is going beyond the requirements or
6 is merely incompatible with the requirements of
7 the NPDES permit.

8 We -- you stated that including the
9 Coastal Commission would not result in delay, and
10 I believe truly that the Coastal Commission has no
11 intention to delay this implementation. But
12 again, in our -- in the Committee's considered
13 judgment, it just was a more workable task to keep
14 this mitigation as nimble as possible, to have two
15 permitting agencies make the final call. When I
16 say nimble, I mean opportunities may come up in
17 and around the Elkhorn Slough to take actions that
18 -- where decisions have to be made quickly. And
19 that may be to save large amounts of money, or to
20 literally make the mitigation happen or not
21 happen. And we don't want to risk missing any
22 opportunities to improve the biological
23 productivity of the Elkhorn Slough.

24 In terms of delegating the mitigation,
25 that has not been done. If somebody looks at the

1 condition closely, there is not going to be a
2 check delivered to the Elkhorn Slough carte
3 blanche. The mitigation plan will be developed in
4 conjunction with the advisory team. Decisions
5 will be made by the Energy Commission staff and
6 the Water Board staff. Certainly the Elkhorn
7 Slough will be implementing many of the details,
8 but the major decisions on the mitigation scheme
9 will not be delegated to the Elkhorn Slough.

10 In terms of the nexus in
11 proportionality, I think the record is quite
12 thorough. The same group of scientific experts
13 that's been widely praised for evaluating this
14 process, and the same group of experts that
15 determined that this project could, if not
16 mitigated, have a significant impact on the
17 environment, has also stated that in their
18 scientific judgment, this mitigation package is
19 adequate to fully mitigate the impacts of this
20 project. That group also testified, a number of
21 the members testified that there is a very close
22 nexus between this mitigation package and the
23 impacts of the project, because they believe that
24 many of the organisms that would be entrained are
25 born or generated in the Elkhorn Slough, and

1 therefore anything that enhances the biological
2 productivity of Elkhorn Slough would compensate
3 for that loss.

4 In terms of proportionality, the same
5 group was unanimous also in agreeing to the
6 mitigation package as adequate. So I suppose that
7 addresses proportionality, although a couple of
8 the witnesses testified that species not entrained
9 by the power plant would be indirect beneficiaries
10 of any improvements in the Elkhorn Slough. They
11 would not be directly impacted in a negative way,
12 but they would, if the Elkhorn Slough becomes more
13 biologically productive, have more habitat, food,
14 et cetera.

15 So I just -- I just wanted to clarify
16 what the analysis of the PMPD had to say about --
17 about the Coastal Commission's concerns.

18 But we've got Mr. Bowen on the record
19 here, and we've got the written comments of Jayme
20 Kooser, the Deputy Director of the Coastal
21 Commission, and the Committee will certainly take
22 a close look at those.

23 I'd like to now move to the other agency
24 represented here, which is the Monterey Bay Marine
25 -- National Marine Sanctuary. Mr. Douros.

1 William Douros is the Superintendent of the
2 Sanctuary. Welcome.

3 MR. DOUROS: Mr. Fay, thank you. And I
4 want to add my thanks for your, the Commission,
5 and the Staff coming here today. As you can tell
6 by the size of the audience today, you've saved a
7 lot of people a lot of time out driving, and I
8 realize it's a bit of a hardship on your end.

9 I also want to thank you for a
10 remarkable public process over the past, you know,
11 six months or so. I realize it's been going on
12 longer than that, but I feel as if the CEC over
13 the years is often criticized for having a
14 relatively closed process, and I think you've
15 really gone out of your way with these public
16 meetings, as well as the extensive public
17 documents you've shared, in terms of responding to
18 comments, and really opening up the that process
19 to the local community and to other agencies.

20 The Sanctuary will submit a letter in
21 the next few days, providing you with some
22 comments, but I'll just give you those orally
23 today, and give you a heads up as to what those
24 will be. Some of those are familiar, though, in
25 that they've been captured in the PMPD that has

1 been produced so far.

2 The first of those has to deal with the
3 section on laws, ordinances, regulations and
4 standards on page 141. That section describes the
5 other regulatory controls and regulations that
6 affect the decision and the actions that will
7 result from the proposed power plant expansion.
8 That does not list the regulations of the Monterey
9 Bay National Marine Sanctuary.

10 The Sanctuary is a federal agency,
11 managed by the National Oceanic and Atmospheric
12 Administration, with laws and regulations that
13 deal with certain activities and prohibit certain
14 activities through the National Marine Sanctuaries
15 Act and regulations adopted specifically for each
16 sanctuary.

17 We have, of most relevance to the Duke
18 Power Plant expansion, we have regulations that
19 prohibit discharges into the Sanctuary, as well as
20 discharges beyond the Sanctuary boundary that
21 subsequently enter the Sanctuary. And those
22 regulations identify or allow for our authorizing
23 variances to those prohibitions, and the most
24 typical way that that occurs for a project like
25 Duke's is we authorize other agencies' permits.

1 Now, the Regional Board does have the
2 greatest overlap in terms of its jurisdiction from
3 a state perspective, and what we typically do is
4 authorize permits for discharge that the Regional
5 Board issues. We've got a memorandum of agreement
6 with them that addresses how we go about joint
7 permitting for -- for various kinds of activities.
8 Their state, and even their federal authority
9 doesn't preempt the Sanctuary's, nor does ours
10 preempt theirs.

11 The same theory exists with how we
12 handle other projects, like with the Coastal
13 Commission or with the California Energy
14 Commission, though this is the first one that
15 we've dealt with. Our typical process would be to
16 authorize a permit that you issue, so as not to
17 duplicate excessive permit structures. And so
18 that's a very important distinction to keep in
19 mind, and sort of the core of the comments that we
20 made back in July and the comments that we'll make
21 in the next few days, and my comments today, that
22 we look to your agency first, and if you can
23 resolve our concerns, then our concerns are
24 addressed and we don't need to issue a permit.

25 And so because our regulations prohibit

1 discharges, and they identify a standard by which
2 we must meet -- that we must meet in order to
3 issue a permit, it's a different standard than the
4 CEQA significant adverse environmental effect that
5 you've used up until now.

6 Our standard deals with the requirement
7 that we have in order to issue an authorization to
8 another permit, is we need to determine that the
9 activity will only cause short term negligible
10 adverse effects. And so that's I would say a
11 higher standard, or a lower standard, depending on
12 one's perspective, that's a more difficult
13 standard to meet.

14 And what we have acknowledged in our
15 letter that you flag in your PMPD is that while
16 the reports to date seem to suggest that there's
17 no significant impact, and I think a refinement I
18 would make is that they state it would be
19 difficult to determine if a significant impact
20 will occur from the discharge, not absolutely we
21 promise it won't occur, just it'll be difficult to
22 determine if one will occur, our standard is more
23 stringent than that.

24 What we have said along the way is that
25 we think in order to -- for us to issue a permit,

1 we need additional information that we are willing
2 to collect through a monitoring program over the
3 initial years of operation of the Duke Power
4 Plant, that would demonstrate that your studies
5 and your findings and your experts are correct
6 that there's really not going to be an effect from
7 this discharge.

8 And that's the basis of this what we've
9 called a coastal waters evaluation program, that
10 Duke agrees it's worth it to fund. The Regional
11 Board staff agrees it's worth it to require that
12 in the permit. And we ask that you also
13 incorporate that requirement in whatever the term
14 is that comes after the PMPD, in the final
15 decision by the CEC, that needs to incorporate
16 that -- that requirement.

17 Duke has said \$200,000. We have since
18 discussed with them, and they've agreed, to fund
19 it at a level of \$425,000, and our letter will
20 include the language that you can find in the
21 Regional Board's staff proposal, and you can
22 incorporate that straight into the permit.

23 And my suggestion would be to
24 incorporate that as Bio-9, and when you look at
25 the permit you'll see Bio-8, which is a condition

1 that requires Duke to fund movement of the Marine
2 Mammal Center, is that same sort of concept. I
3 don't view that as a condition that you have to
4 impose in order to meet the requirements under
5 CEQA, but you've chosen to impose that because
6 Duke has asked you to, and it's a good condition
7 to have in there. And there's no harm in
8 including it.

9 My sense is there's certainly no harm.
10 In fact, it's to your benefit and Duke's benefit
11 to include this other condition that we are
12 requesting, as well. We want to make sure that
13 that requirement, their commitment to fund this,
14 is in an enforceable condition, in an enforceable
15 permit, and then our issues are resolved, dealing
16 with the thermal discharge. And that's all we're
17 talking about evaluating, is the effect of the
18 thermal discharge.

19 So that would be the basis of one issue
20 that we have. And I want to touch on one other
21 issue, and that's this broader mitigation plan
22 that's incorporated in Bio-7.

23 And in my mind, this is a very difficult
24 condition and issue for me to comment on, in that
25 I've been very impressed by Duke's overall

1 attitude, performance, and perspective in terms of
2 getting this project approved, and their
3 willingness to fund certain kinds of mitigations
4 like that. I worked, prior to managing the
5 Sanctuary, for nearly 15 years in Santa Barbara
6 County, regulating industrial onshore oil and gas
7 coastal energy facilities. I've dealt with a lot
8 of energy companies. And for those that have
9 frustrations dealing with Duke, I can tell you
10 that rarely do companies perform better than Duke
11 does in terms of meeting the public's needs and
12 expectations, and they need to be commended for
13 that.

14 And for those that have frustrations
15 about how they've dealt with them, I can tell you
16 it gets much worse than Duke, and it rarely gets
17 better than Duke's overall approach.

18 I am sensitive to their sense that they
19 need to get moving on this project. They don't
20 want delays in terms of the mitigation, and
21 they're looking for some certainty as well for the
22 future. That's a familiar theme with me, and I'm
23 sure it is with the Energy Commission, as well.

24 But I support the notion that there
25 needs to be better definition for what the \$7

1 million will be spent on. I understand the
2 objective and the intent, and that is to enhance
3 the estuarine ecosystem, and that is a worthy and
4 laudable goal, and I support that, as well. But I
5 do think the expectations under CEQA go beyond
6 simply having a good objective, and that there
7 ought to be more specificity as to what the
8 money's going to be used for.

9 Again, like others, I don't think that's
10 a criticism of what the Elkhorn Slough
11 Foundation's put forward in their plan, but I
12 think that there's -- you owe it to the public to
13 have a better description as to how that's going
14 to happen, how that \$7 million will actually
15 benefit that estuarine ecosystem.

16 And I think this is a way to do that
17 without affecting Duke, because I'm sensitive to
18 their issues and their concerns on that.

19 Short of that, though, and I've sort of
20 been surprised that the agency staff has been --
21 the Regional Board, especially, unwilling to make
22 any movement on that issue, though there's been
23 months now worth of comment that there needs to be
24 more specificity from agencies, as well as the
25 public. Short of any change in that regard, I do

1 think the condition that you have here is
2 significantly better than that which the Regional
3 Board has put forward.

4 We've encouraged already, to the
5 Regional Board staff, that they adopt the concept
6 behind Bio-7 that you have for their permit,
7 because I think it adds some significant
8 advantages, in particular, the requirement that
9 some of that money be used to monitor the
10 effectiveness of the enhancement program. So, I
11 mean, that's -- that's critical. You've got to do
12 that if you're not going to make other
13 improvements to it.

14 But also, this concept of the advisory
15 team, I think that's essential, as well, and I
16 appreciate that you've added that specifically as
17 a requirement, and you're going to go through a
18 process of getting advice from other agencies. I
19 don't think we're talking about a dozen. I think
20 we're talking about four or five other agencies,
21 at the most, who have a regulatory role, like the
22 Monterey Bay Sanctuary, in how you go about
23 improving that estuarine habitat. And it's
24 critical, sort of common professional regulatory
25 courtesy to involve those agencies in those kinds

1 of decisions.

2 The last point I wanted to make is that
3 I concur with what the Coastal Commission said,
4 and I appreciate Mr. Fay's validation of that,
5 that you can go beyond the Regional Board's
6 permit. And I think the Regional Board has taken
7 that in their response letter to the Commission
8 and the Sanctuary's requests quite a bit farther
9 than what the law says. You can go much further
10 than that. You should feel comfortable, and it
11 sounds like you do feel comfortable that if you
12 have a compelling reason to do that, you might
13 very well go do that whether it's for air
14 requirements or for the Regional Board's NPDES
15 discharge to the ocean and the estuarine discharge
16 requirements.

17 So that's a significant thing, I think,
18 for you to have acknowledged that, and I
19 appreciate that.

20 Thank you very much, again, for your
21 providing us all the opportunity to comment.

22 HEARING OFFICER FAY: Thank you.

23 I need to make one correction. You
24 referred to Duke having requested condition Bio-8,
25 and just for the audience, condition Bio-8

1 acknowledges the current relationship between the
2 Marine Rescue -- Marine Mammal Rescue Center that
3 -- that exists at the Moss Landing Power Plant,
4 and that Duke is going to support them in moving
5 their location.

6 All the condition does is link the
7 continued support of that institution to the life
8 of the power plant. That was not Duke's idea.
9 That was something the Energy Commission thought
10 would be a good thing to do. And as you are --
11 you correctly noted, it was not compelled by the
12 need for mitigation. We did not find that that
13 mitigation was essential. We just thought that if
14 there's any possible doubts, that let's link the
15 impacts of the power plant to the support for this
16 Rescue Center, which can only help the marine
17 mammals and the Monterey Bay.

18 Okay. Thank you.

19 Now I'd like to take Mr. Dilworth, who
20 has to leave. And, Mr. Dilworth, you indicated a
21 letter attached. Do you have a letter to submit?
22 Okay.

23 MR. DILWORTH: A letter, but I only have
24 one copy.

25 HEARING OFFICER FAY: One copy. If you

1 give that to the Public Adviser when you're
2 through, I'm sure Ms. Mendonca will be sure it
3 gets docketed. But I would ask you to deliver it
4 to her so she doesn't have to come to you.

5 MR. DILWORTH: Yes, I'd be happy to.

6 Good morning. David Dilworth,
7 representing Helping Our Peninsula's Environment.

8 First, let me thank you on the venue. I
9 appreciate that we're not inside enemy territory,
10 as it were. Thank you for responding to a concern
11 that several people had.

12 These comments reflect not just the
13 opinion of Helping Our Peninsula's Environment,
14 but they reflect my expertise and experience as an
15 environmental impact expert, having compiled an
16 encyclopedia of more than a thousand environmental
17 impacts, scientific basis, and references for
18 those.

19 Just for reference, as correctly noted
20 by the Herald, if approved, this would be the
21 biggest power generation plant in California, and
22 is already the largest air pollution generator in
23 Monterey County, by far. It would suck in about
24 one -- 1.4 billion gallons of cool estuary water
25 filled with marine life every day, and if

1 approved, it'll kill some 270 million, 270 million
2 individual baby marine creatures every day.

3 There are some, as you know, there are
4 80 fish species, 207 bird species, and 400
5 invertebrates whose food chain depends upon those
6 300 million larvae per day that would be killed,
7 and unfortunately, those species are not
8 accustomed to cooked food.

9 If approved, the exhaust will be heated
10 up at the very least to 20 degrees above natural
11 circumstances. However, the exhaust temperatures
12 will be as much as 34 degrees, and possibly even
13 higher, because the 34 degrees is merely the limit
14 on the proposed Regional Water Quality Control
15 Board permit, and exceedences can take place.

16 I noted that there appears to be real
17 time monitoring of the temperature of the exhaust,
18 but it doesn't seem to be tied in to the
19 mitigation, so that the temperature of the exhaust
20 should be controlled by the exhaust. It should
21 control the temperature of the flow, but it
22 doesn't seem to be connected. As a former
23 engineer, that's a simple operation to connect the
24 two.

25 If approved, this would create an

1 exhaust 1.4 billion gallons of heated water per
2 day. That's 1.4 billion gallons of hot water
3 equal to six square miles, one foot deep, of water
4 up to 34 degrees every day. That's two trillion
5 liters, and the Elkhorn Slough Estuary only covers
6 about six square miles. So we could cover the
7 Elkhorn Slough with a foot of hot water every day
8 with the exhaust from this.

9 During a flood tide, the heated water
10 will actually be sucked back into the estuary from
11 the ocean, because the billion gallon per day
12 exhaust plume is right at the mouth.

13 Your -- the Final Staff Assessment
14 admits that several impacts are significant. It's
15 page 30 in Part 3. Yet the mitigation does not
16 relate to the impacts. They are dis-linked.
17 It's, as someone said, it's robbing Peter to pay
18 Paul, and yet they don't know each other and
19 there's no connection. They are not relatives in
20 any fashion.

21 So the mitigation does not reduce the
22 impacts, because they're not directly related.
23 It's hard to even imagine how they're indirectly
24 related. And the significance of that legally and
25 scientifically is this leaves the significant

1 impacts unmitigated. There are huge toxic
2 discharges proposed -- I wanted to ask, is the
3 Regional Water Quality Control Board's permit
4 already in your record? This was at the hearing
5 this week.

6 HEARING OFFICER FAY: The draft permit
7 is.

8 MR. DILWORTH: It is.

9 HEARING OFFICER FAY: The final permit
10 hasn't been issued.

11 MR. DILWORTH: Okay, I understand,
12 because it hasn't been approved yet.

13 HEARING OFFICER FAY: Yes. In fact,
14 it's -- I can't recall the exhibit number right
15 now, but if you -- if people check their exhibit
16 list in the back, they'll see which exhibit number
17 -- it's extensively referred to.

18 MR. DILWORTH: Okay. We did some
19 calculations with the numbers allowed in here, and
20 so we want to present those to you.

21 The first thing that surprised us was
22 the proposed permit would allow DDT, lead,
23 cyanide, arsenic and mercury to be discharged in
24 unspeakably colossal quantities. Unfortunately,
25 this would be a great opportunity to dump or blend

1 in carefully millions of pounds of toxic waste
2 into our Monterey Bay National Marine Sanctuary.
3 Under the proposed permit, it would allow some 50
4 tons of the deadly toxin lead every year, 50 tons,
5 over 100,000 pounds of lead could be allowed into
6 our sanctuary. That's 500 billion gallons a year,
7 or two trillion liters, at 23.6 micrograms per
8 liter. It's an easy calculation.

9 We also would like to know -- I'm going
10 to back up a little bit. We want to know if you
11 intend to hand over the monitoring of the
12 discharges, the DDT, the lead, the arsenic,
13 cyanide, and so forth, to the polluter, and how
14 often they'll be doing the monitoring -- it
15 appears to be monthly -- and what penalties you're
16 going to impose if they're exceeding those limits,
17 or are you going to turn that over to our regional
18 water quality? Are you going to impose penalties?
19 And what if they're found to be hiding or
20 manipulating data?

21 Related to the DDT, you know, the intake
22 location at the harbor bottom has some of the
23 highest and deadliest concentrations of DDT in
24 California, right near the intake. And even
25 though PCBs -- this is a puzzling thing for us in

1 the proposed water quality permit -- even though
2 PCBs are prohibited in one section, that's the
3 Staff report page 14, Section A.3, under discharge
4 prohibitions, they're permitted in another
5 section. That's page 15, under -- 15A under
6 effluent limitations. That's not clear to us.

7 What you may not know is that lead does
8 not appear at all in the healthy human body, or
9 most organisms in the Monterey Bay Area, and lead
10 is the most toxic of the ATSDR's 20 most hazardous
11 toxics. It's a cumulative poison, it causes
12 irreversible damage, and a gram, a simple gram of
13 lead can kill 20 children. A twentieth of a gram
14 will kill one child.

15 That means that the plant could legally
16 dump enough lead in the bay to kill 900 million
17 children.

18 HEARING OFFICER FAY: Mr. Dilworth, I --
19 I certainly want to give you a chance to air your
20 views, but the chemical constituents you're
21 talking about seem to have to do with the water
22 permit, and, of course, the water board held one
23 hearing and will hold another one on the 27th, and
24 they -- they wrote their permit, and we don't
25 rewrite their permit. We don't have the authority

1 to do that.

2 MR. DILWORTH: There are two points
3 related to that. First of all, you acknowledge
4 that you can set higher limits. The second thing,
5 and how it applies directly to you, is that you're
6 in charge of the CEQA compliance. These impacts
7 were not analyzed or recognized in any fashion in
8 your document.

9 HEARING OFFICER FAY: Okay.

10 MR. DILWORTH: And that's why we're
11 bringing this up.

12 The proposed permit would also allow 139
13 tons of arsenic, 27 tons of cyanide, and 2,000
14 pounds of mercury, and nine pounds of pure DDT,
15 all into our marine sanctuary. We want to know
16 what the toxic impacts to the sanctuary biota --
17 the sanctuary, not the estuary -- from -- excuse
18 me, the marine sanctuary as opposed to the inland
19 mixed water in the estuary, from the lead, the
20 arsenic, the cyanide, the mercury, and the DDT.
21 You don't need to be an environmental expert to
22 see that these are clearly significant unanalyzed
23 and unmitigated environmental impacts.

24 Well, under CEQA, independent of an EIR,
25 under CEQA, when you have significant impacts,

1 they require the evaluation of alternatives. The
2 FSA failed to evaluate alternative technologies,
3 such as cooling towers, which could obviate or
4 reduce the amount of water used for cooling into
5 the water cooled engine we're dealing with here.
6 It only reviewed alternative sites. It did not
7 look at alternative technologies.

8 An alternative technology is -- oh, as a
9 matter of fact, in terms of alternative sites,
10 that was also a meaningless review because it only
11 -- it was restricted to sites within Monterey
12 County, and then it conveniently found no other
13 site in Monterey County suitable, even though
14 we're within spitting distance of Santa Cruz
15 County, not that I'm trying to push this off on
16 Santa Cruz, but alternative sites that should have
17 been evaluated include regional areas, not just
18 the arbitrary lines of Monterey County.

19 Cooling towers, speaking as an engineer,
20 are a feasible alternative. We have typical
21 strong daytime onshore winds at Moss Landing, at
22 the site, and they can provide very low cost
23 cooling. When the winds are weak, the air flow
24 can be supplemented with electric fans, using a
25 tiny fraction of the electricity produced at the

1 plant. And, by the way, your FSA was incorrect
2 describing the breezes here as offshore. They are
3 onshore winds. There are offshore winds at some
4 times, but they're light nighttime breezes.

5 An alternative intake was not analyzed,
6 as far as I can discern from your documents. If
7 the cooled water is no problem, we heard someone
8 testify that the background levels -- within a few
9 meters of the exhaust, the water will be within
10 background levels. Well, if it's going to be
11 within background levels within a few meters, why
12 isn't the alternative intake out there where
13 they'll be picking up the water at background
14 levels?

15 The mitigation is merely money to buy
16 unspecified shallow water wetlands, with the
17 emphasis on lands. Some significant biological
18 impacts are the loss of deeper water marine
19 creatures. The water is not taken from a land --
20 a soaked land. It's taken from a deep part of the
21 harbor. The impacts will be on the deeper parts
22 of the harbor, and the deeper yet parts of the
23 Monterey Bay.

24 Even if the mitigation was related to
25 the impacts, it is not avoidance. It's not

1 minimization. It's not reduction or rectification
2 over time. The only mitigations which are legally
3 adequate are those, or compensation. And we're
4 not sure that the compensation is even
5 appropriate.

6 A serious problem with the mitigation is
7 that it is still unquantified and speculative, and
8 does not address the potential destruction of the
9 marine life in the estuary water or in the
10 sanctuary. And as you know, inability to
11 determine mitigation effectiveness means the
12 mitigations are not fully enforceable due to
13 vagueness. And CEQA requires mitigations to be
14 fully enforceable.

15 So we recommend avoidance mitigation,
16 avoidance of all the biological impacts. And
17 under the Coastal Act, which you are bound by as
18 state law, there is something called ESHA, for
19 short, Environmentally Sensitive Habitat Areas.
20 There's a decision called Bolsa Chica, southern
21 California, you've probably heard of. And Bolsa
22 Chica, in a nutshell, said don't touch a hair on a
23 wetlands' head. So if you're harming the
24 wetlands, you can't do it.

25 Couple of things that may -- these are

1 miscellaneous items. Cooling water is a
2 euphemism. We're a little concerned about that.
3 I would prefer you stop using the concept of
4 cooling water. Heated exhaust water is a more
5 accurate description. We would prefer if you used
6 that in the future.

7 And we'd like to point out that this
8 project is not coastal dependent. We can think of
9 absolutely no reason why this would be coastal
10 dependent. Water is available inland, just as
11 it's available on the coast. However smaller
12 amounts or fresh it may be, it may even have
13 advantages coming -- to coming from inland. Not
14 that we are advocating that. We think the
15 alternative of the cooling tower should be
16 properly evaluated, and there may be other cooling
17 alternatives, as well.

18 Thank you for your time.

19 HEARING OFFICER FAY: Thank you.

20 Oh, I just got a note from counsel that
21 we have another agency represented here. Mr.
22 Stillwell, of the Moss Landing Harbor District.
23 We'd like to hear from the Harbor District now.

24 MR. STILLWELL: Good morning, sir. My
25 name is Jim Stillwell, I'm the General Manager for

1 the Moss Landing Harbor District here in Moss
2 Landing, California. And I'd like to submit for
3 the record a letter that we sent on July 31st,
4 2000, that I didn't see reference to in any of
5 your documents. Perhaps it got lost somewhere
6 between rural Moss Landing and urban Sacramento.

7 Basically, to highlight the concerns we
8 expressed in the letter. Number one was
9 jurisdiction, and I wanted to remind the Energy
10 Commission that the Moss Landing Harbor District,
11 a political subdivision of the State of
12 California, was granted title to certain state
13 sovereign land described as the old Salinas River
14 Channel, and basically the Elkhorn Slough, all of
15 the submerged lands to the ordinary high tide
16 line. Our jurisdiction also extends out into the
17 Monterey Bay for a distance of 3,000 feet.

18 We point this out because the intake
19 waters and outfall waters originate and terminate
20 within the boundaries of the Moss Landing Harbor
21 District. Therefore, the Moss Landing Harbor
22 District exercises control of these waters through
23 its ordinance code and in the form of construction
24 permits, facilities use permits, et cetera.

25 Number two. We wanted to address

1 fallout type particulate. The Moss Landing Power
2 Plant currently administers a program whereby
3 certain boat owners are compensated for damage
4 caused by FTP to horizontal surfaces. All vessels
5 are not permitted to participate in the program,
6 and the district's docks, floats, wharves,
7 floating equipment, buildings and vehicles are not
8 in the program. Although not directly related to
9 the plant expansion, the Moss Landing Harbor
10 District nonetheless believes that the structure
11 of this program must be addressed as Duke's
12 presence and influence grows in the community.

13 The Moss Landing Harbor District
14 believes that the FTP program universally affects
15 all boats and structures in the harbor, although
16 the impact varies with geographic location,
17 whether you're directly downwind from the power
18 plant or not.

19 Electrolysis. The Moss Landing Harbor
20 District has been informed by certain of its
21 boating public that vessels occupying berths that
22 overlie the Moss Landing Power Plant outfall line
23 experience severe corrosion and electrolysis not
24 experienced elsewhere in the harbor. We don't
25 have the expertise or resources to investigate

1 this complaint, but as -- as the water flow
2 increases through the outfall lines, if the
3 electrolysis is a direct result of the moving
4 water, then it's possible that this problem may
5 increase. We'd like Duke to help us out with
6 that.

7 We have noise problems. We have a lot
8 of live aboard vessels in the community, and they
9 generally complain about the noise generated by
10 the power plant. Most of these complaints seem to
11 be about noise at night. We just request that
12 Duke personnel meet with the Harbor Community
13 Association membership to address the problems.

14 And dredging. The Moss Landing Harbor
15 District undertakes dredging of submerged lands
16 under its jurisdiction from time to time, as
17 necessary. Presumably, this would include
18 dredging in the vicinity of Duke's intake
19 structures. The district has been advised that
20 future dredging efforts will require upland sites
21 for handling, storage and disposal of dredged
22 materials. And perhaps Duke Energy North America
23 could contribute to the Moss Landing Harbor
24 District dredging reserve fund an amount adequate
25 to finance ongoing dredging in this area of the

1 harbor, and perhaps the Moss Landing Power Plant
2 could provide an upland site for handling or
3 holding the dredged materials.

4 So we just want to enter these into the
5 record when we -- when we look at some of the
6 other issues that affect this power plant
7 expansion.

8 In closing, I wanted to state clearly
9 that the Board of Harbor Commissioners, an elected
10 body at large from the north part of Monterey
11 County, representing 155,000 citizens within our
12 district, supports the power plant expansion. We
13 think that Duke and its predecessor, PG&E, were
14 good neighbors, and we look to continued good
15 relationships with them in the future.

16 Thank you.

17 HEARING OFFICER FAY: Thank you, Mr.
18 Stillwell.

19 Mr. Stillwell, before you leave, can I
20 just ask, has anybody from the Energy Commission
21 staff ever contacted you about any of the impacts
22 --

23 MR. STILLWELL: No.

24 HEARING OFFICER FAY: Do you have staff?

25 MR. STILLWELL: Yes.

1 HEARING OFFICER FAY: Do you know if the
2 Energy Commission staff has --

3 MR. STILLWELL: They've never contacted
4 us.

5 HEARING OFFICER FAY: Thank you.

6 Okay. Another direction to Staff.
7 Please be sure that the appropriate consultants
8 see the Moss Landing Harbor District letter, and
9 make contact with the District and discuss ways
10 that some of these project impacts can be
11 addressed. I recommend that Duke do that, as
12 well.

13 Nobody at the table has seen this letter
14 before from the Harbor District. I don't know why
15 it hasn't come to our attention, since it was
16 properly addressed. However, we do want to take
17 care of these concerns if at all possible.

18 All right. Are there any other
19 agencies, agency representatives present? Please
20 come forward and introduce yourself.

21 MR. MAKI: Thank you. I sent up a card,
22 and perhaps you didn't get it. Steven Maki,
23 representing the County of Monterey.

24 HEARING OFFICER FAY: I'm sorry, Mr.
25 Maki --

1 MR. MAKI: Steven Maki, County of
2 Monterey.

3 HEARING OFFICER FAY: Okay.

4 MR. MAKI: We have two concerns. One
5 with respect to Land 2, page 255. We had a
6 question -- by the way, let me preface everything
7 by indicating that we will have a follow-up letter
8 formalized and signed by the Board of Supervisors
9 to the Commission regarding our comments that I'll
10 be making today.

11 At page 255, in the verification, and
12 the previous discussion under number two -- excuse
13 me, to Land 1. Land 1, at page 254 and 255.

14 We didn't quite understand the -- the
15 \$100,000 and the purposes and the needs for that
16 \$100,000 to be paid to, or to be provided to the
17 California Energy Commission with respect to
18 public access and public access programs. We
19 believe the -- the \$100,000 should probably more
20 appropriately be utilized by those affected
21 agencies responsible for access in the area, and
22 specifically that would include both the
23 California Coastal Commission, who has been cited
24 previously as recipients of additional funds for
25 that effort under Land 2.

1 Secondarily, our other concern is --
2 probably comes to more heart and soul of the local
3 impacts that have been identified throughout the
4 process. And I wanted to echo Mr. Douros'
5 comments about the public process and the action
6 of the -- of the Committee -- excuse me -- of the
7 Energy Commission, as well as Duke, both within
8 the process and sort of behind dealing with the
9 staffing, with staff and county staff, throughout
10 all of county staff with respect to the project.

11 One of the strongest concerns that has
12 been echoed throughout the process before our
13 Planning Commission, as well, is the follow-up
14 letter with our Board of Supervisors as to the
15 impact of traffic and traffic mitigations.

16 There has been tremendous concern in the
17 local community, especially regarding existing
18 conditions and the effects the construction
19 activities have on those existing conditions, and
20 the fact of the need of improvements to Highway 1
21 and Dolan Road, as well as other intersections
22 that will be impacted as traffic reroutes as a
23 result of construction impacts.

24 We were therefore somewhat surprised in
25 receipt this morning of the -- of the PMPD

1 comments by Duke, and specifically those suggested
2 changes to Trans-6, which appear on page 6 of --
3 and page 7 of Appendix A.

4 HEARING OFFICER FAY: Excuse me, Mr.
5 Maki. You said you received them this morning?

6 MR. MAKI: Yes.

7 HEARING OFFICER FAY: So Duke didn't
8 send those to you?

9 MR. MAKI: They may have sent them, but
10 I have not received them.

11 HEARING OFFICER FAY: I know they were
12 mailed out September 15th, along with the Staff --

13 MR. MAKI: I have not received -- seen
14 them until I walked in the room. No, I'm sorry.
15 That's not to say that they weren't sent. They
16 were -- probably were sent, they just haven't
17 filtered down through the process.

18 HEARING OFFICER FAY: Okay.

19 MR. MAKI: Specifically, there had been
20 issues regarding timing and staging of activities
21 at the plant. As indicated at page 6 of Appendix
22 A, there is a -- a switch in the -- in the impact,
23 or level of intensity, where projects would be
24 constructed. The original indicated just a 400
25 level of employees, of new employees for the

1 project. And we had always maintained that level
2 of impact and -- and identified mitigations to
3 that level of impact, and not to precisely day
4 shift workers, the analysis that was conducted for
5 those impacts of employee traffic were 400
6 throughout the day, both shifts, three shifts or
7 however many shifts were -- were being proposed at
8 the time.

9 The second area, and probably of most
10 concern, is at page 7. With the additional
11 language we don't, I think, necessarily have a
12 problem with the 30 days reaching the 400 total
13 employees, not just day shift employees. But the
14 actual timing of the mitigations to be prior to
15 commercial operation, which is essentially the
16 start-up of the project, as we -- as we read this,
17 and would -- flies in the face of any
18 consideration of mitigations to those impacts.

19 And we would strongly suggest, and we
20 will be following up with language that -- that
21 language be stricken. It just completely obviates
22 the need for any -- any mitigation based upon the
23 analysis of those impacts.

24 That would conclude -- those would
25 conclude my two comments. And we will be

1 following up with the letters I indicated to the
2 Commission. Thank you very much.

3 HEARING OFFICER FAY: Thank you, Mr.
4 Maki.

5 Before we move on to the next commenter,
6 I -- I neglected to point out that, in response to
7 Mr. Douros' comments, in Appendix A of the PMPD we
8 did cite reference to the authority of the
9 National Marine Sanctuary. Unfortunately, that
10 was not picked up in the discussion in the text.
11 But it is listed in the LORS in Appendix A.

12 Mr. Carney, can you hang tight just a
13 minute. We --

14 PRESIDING MEMBER KEESE: Can I ask
15 Staff, are we expected to reach 400 day shift, or
16 does the Applicant have that --

17 MR. ELLISON: The answer is yes, we do
18 expect to reach that.

19 PRESIDING MEMBER KEESE: So I guess the
20 difference between 400, 400 day shift, is probably
21 a nominal amount of time? I mean, is there -- is
22 there a particular reason for this change?

23 MR. VIGOR: Yes, sir. Throughout the
24 duration of --

25 PRESIDING MEMBER KEESE: For the --

1 MR. VIGOR: Oh, I'm sorry. Randy Vigor,
2 Duke Energy.

3 Throughout the duration of the
4 discussions with the county and the state and the
5 Commission, we've had concerns about the staffing
6 required to complete the project in a timely
7 manner. And we have discussed this issue. In
8 fact, in the county's letter, at one point they
9 had a day shift comment in their letter, the
10 previous letter they -- I believe they issued to
11 the Commission.

12 We have discussed this with Dale
13 Edwards, the supervisor on the staff, and he's in
14 agreement with the day shift approach. All the
15 analysis is based on peak traffic periods, and we
16 believe that we fully mitigated those. We expect
17 to have upwards of --

18 PRESIDING MEMBER KEESE: Well, I guess
19 I'm --

20 MR. VIGOR: -- a total --

21 PRESIDING MEMBER KEESE: -- I guess I'm
22 trying to ask what the difference -- is the
23 difference between 400 and 400 day shift, is that
24 six weeks?

25 MR. VIGOR: Oh, a period of time.

1 PRESIDING MEMBER KEESE: Yeah. What --
2 what are -- you're going to -- you're going to do
3 the mitigation when you -- before you reach 400
4 day shift workers, and -- under the proposal. And
5 under the original, it was you were going to do
6 the mitigation before you reached 400 employees.
7 Are we talking about a two week, four week, six
8 week, ten week situation, or are we talking about
9 never reaching 400 day shift workers?

10 MR. VIGOR: The way the condition is
11 written, we are required to improve the roads, and
12 if we cannot do that we cannot exceed 400
13 personnel on the site. Total. We expect to
14 achieve 400 sometime in February. Day shift
15 staffing would be upwards of 500, over 500.

16 PRESIDING MEMBER KEESE: In February, or
17 when?

18 MR. VIGOR: In February or March. And
19 then in the time period, the same time period, we
20 would expect to have an evening shift of about
21 250. So we would have approximately 700, 750 on
22 the site, total, between the day shift and night
23 shift. For about three or four months.

24 PRESIDING MEMBER KEESE: The -- oh. I'm
25 just looking at this because it was brought to our

1 attention.

2 MR. VIGOR: Correct.

3 PRESIDING MEMBER KEESE: So the reason
4 for switching from 400 staff to 400 day shift
5 staff was to delay the obligation.

6 MR. VIGOR: No, sir. No, the obligation
7 that we have is to try to do it as quickly as
8 possible, working with Caltrans to try to get our
9 permits to achieve that. This allows the work to
10 continue with a full complement of staff on the
11 back shift, which would not affect peak traffic
12 periods.

13 PRESIDING MEMBER KEESE: Okay.

14 MR. VIGOR: We would do the improvements
15 as soon as possible. The Commission came up with
16 the language that -- or the Staff, I'm sorry, came
17 up with the language that they wanted us to make
18 sure that if for some reason we got to 400, and we
19 had to stop, and the project continued at 400 and
20 we completed the project, we still had to make the
21 improvements to the roadways. It was essentially
22 a guarantee to the county that we would make those
23 improvements.

24 PRESIDING MEMBER KEESE: Thank you.

25 MR. VIGOR: That was the intention of

1 that.

2 MR. ELLISON: And let me just augment
3 that statement, to make sure it's crystal clear.

4 Mr. Vigor, in his second comment, was
5 referring to this or prior to commercial operation
6 language. I think the county is reading that as
7 giving Duke the choice of not implementing the
8 road improvements until commercial operation, if
9 Duke were to choose to do that. That's not
10 correct. That language comes from the Energy
11 Commission Staff as a backstop to make sure that
12 if for some reason the 400 day shift staffing
13 level were not reached, that Duke would not escape
14 the condition entirely.

15 And so the Staff wanted that language
16 inserted to make sure that that would not be the
17 case. As Mr. Vigor explained, we -- we frankly
18 think that that language will have no practical
19 effect because we will achieve the levels of
20 staffing that will require the road mitigation as
21 he stated, in February or March.

22 PRESIDING MEMBER KEESE: Thank you.

23 MR. OGATA: I want to echo that. I
24 believe Mr. Maki read that in a way that we hadn't
25 anticipated. Mr. Ellison is correct. Staff put

1 that language in because we wanted to be sure that
2 if they never -- if Duke never reached 400, that
3 those improvements would still be made before the
4 plant operated. That's the intent of that
5 language.

6 PRESIDING MEMBER KEESE: Thank you.

7 HEARING OFFICER FAY: So if it were to
8 say instead, but in no case later than commercial
9 operation, that would be consistent with what
10 you've just said; right, Mr. Ogata?

11 MR. OGATA: Yeah, I believe so.

12 HEARING OFFICER FAY: Okay.

13 MR. ELLISON: Right. That's correct,
14 and we would have no objection to that sort of
15 clarification.

16 HEARING OFFICER FAY: All right. Okay.
17 Does that address your concern, Mr. Maki?

18 MR. MAKI: Yes.

19 HEARING OFFICER FAY: All right. Thank
20 you.

21 Mr. Carney.

22 MR. CARNEY: Mr. Chairman, and Members
23 of the Commission, my name is Bud Carney. I have
24 been the planning consultant to Monterey County
25 for the Duke Energy projects over the last year,

1 and I just wanted to very briefly acknowledge the
2 hard work that your Staff has done over the last
3 year. I enjoyed the opportunity to work with Eric
4 Knight, Paul Richardson, certainly Jeff Ogata, and
5 also Mike Bowen from the Coastal Commission.

6 And I certainly want to make sure your
7 Commission knows how hard your Staff has worked.
8 I know how hard Monterey County staff has worked,
9 and we certainly appreciate the efforts that Duke
10 Energy has made in terms of making the kind of
11 public contact that we, as planners, always like
12 to see applicants do.

13 There is one concern that I have. In
14 Bio-7 there is a reference to the advisory
15 committee dealing with the allocation of the \$7
16 million with regard to the mitigating the impacts.
17 It's not clear to me, in reading the document, who
18 is the advisory committee. We had recommended
19 some time ago that Monterey County be included as
20 part of the advisory committee, and we'd like to
21 include that in the record today to make sure that
22 Monterey County is a part of the advisory
23 committee.

24 That concludes my comments, and thank
25 you very much.

1 HEARING OFFICER FAY: Thank you.

2 Any other public agencies -- yes, ma'am.

3 Please --

4 MS. ANDREWS: Hi. My name is Sue
5 Andrews. I'm the Manager of the Marine Mammal
6 Center, Monterey Bay operations.

7 I just wanted to confirm to you that we
8 are moving forward in our partnership with Duke
9 Power. We appreciate their cooperation, and we
10 appreciate your efforts in our area here. Our
11 current location is at the north intakes of Duke
12 Power Plant, previously PG&E, and we have been
13 there since 1993. We are in the process now of
14 creating our new site, inland on Duke property,
15 with their cooperation and assistance in the form
16 of a building to renovate, and creating the new
17 site completely in there.

18 So far, plans are going forward nicely,
19 and we appreciate your input.

20 HEARING OFFICER FAY: Thank you.

21 All right. Carolyn Nelson -- Nielson.
22 Ms. Nielson, from Aptos, do you want to come up?
23 Yes.

24 MS. NIELSON: Chairman Keese, Assistant
25 Praul, and Officer Fay, my name is Carolyn

1 Nielson. I have been a docent at Elkhorn Slough
2 Reserve since 1997. We are the people who beaver
3 away at such tasks as maintaining the trails,
4 planting native oaks, and weeding out alien
5 plants.

6 While I was hosting at the visitors
7 center two weeks ago, a guest came in and asked
8 me, very directly, why none of the Elkhorn Slough
9 docent community had participated in the power
10 plant discussions. That's a very good question.

11 I could find no notice of the meetings
12 on the docent bulletin board, nor was it published
13 in the docent newsletter. And neither was it
14 discussed in our docent meetings. So I asked one
15 of the staff members the question, why have we not
16 participated and discussed the proposed power
17 plant application. Her answer was, I trust Mark
18 Silberstein to know what is best for the Slough.
19 And I most certainly agree with that.

20 But this partly explains why I am so
21 late and still trying to get up to speed on this
22 subject. And I have to tell you that I am very,
23 very concerned. I cannot understand how anyone
24 invested in the health and vitality of the
25 estuarine reserve would not be actively opposed to

1 this proposed power plant expansion.

2 Even more troubling is the mitigation.

3 I fear that money is intended to preempt
4 opposition to the power plant expansion, and might
5 actually muzzle the community most intimately
6 involved with the Slough, and perhaps it has done
7 so already.

8 I'm also concerned that the Goebe larvae
9 that have been sort of singled out as the primary
10 organism of concern in the entrainment water is
11 deceptive. There are thousands of other organisms
12 in a single gallon of Slough water. In our docent
13 training we learned that it takes 10,000 pounds of
14 plankton to support 100 pounds of sardine, which
15 in turn will support 10 pounds of larger fish,
16 which will allow a young seal to gain one pound.
17 Indirectly, 10,000 pounds of plankton therefore
18 are necessary for a seal to gain one pound.

19 If the energy plant sucks up 1.2 billion
20 gallons of water into the power plant every day,
21 they will be destroying thousands of pounds of
22 plankton, as well as Goebe larvae. This is
23 obviously at cross purposes with the commitment to
24 maintain and restore, if possible, the ecological
25 health of the sanctuary and the Slough.

1 Since we have no comprehensive study of
2 the ecology of the Slough before the construction
3 of the present power plant in the 1950's, we don't
4 really know the impact it has already had. We do
5 know that no energy company would be permitted to
6 construct this plant in this location today. We
7 are much more knowledgeable now about marine
8 biology and wetland ecology than we were in the
9 1950's. Therefore, since this plant would not be
10 built in this location today, it does not make
11 sense to issue a permit for an expansion.

12 And it is an expansion. The proposed
13 plant will suck in 45 percent more water than PG&E
14 was permitted to do, and it will produce 22
15 percent more megawatts. That is an expansion.

16 It is only fair that Duke Energy be
17 allowed to maintain and operate the present plant
18 until their permit expires. But they should not,
19 I believe, be given a permit allowing expansion.
20 Not now, not ever.

21 Thank you for your attention.

22 (Applause.)

23 HEARING OFFICER FAY: Our next speaker
24 is Vicki Nichols, who is Director of Policy
25 Research for Save Our Shores.

1 MS. NICHOLS: Hello, and thank you.

2 It's pretty tough following that heartfelt
3 testimony.

4 Again, my name is Vicki Nichols, and I'm
5 the Director of Policy and Research for Save Our
6 Shores. And today I'm going to be submitting a
7 letter signed by five organizations, Center for
8 Marine Conservation, the Sierra Club Ventana
9 Chapter, Friends of the Sea Otter, Save Our
10 Shores, and The Otter Project. This letter will
11 detail our concerns and our request.

12 Over the -- the past few months the
13 groups that I've just mentioned have been very
14 involved in this process, and we have consistently
15 raised our concerns about the project, both in
16 written and in verbal testimony. What I am going
17 to be focusing on today is what -- all of the
18 groups have come together, and have basically
19 requested a modification to the PMPD to include
20 two elements. One is a five-year monitoring
21 program to assess potential impacts to the Elkhorn
22 Slough eco-system, and, two, to address the
23 mitigation planned in much more detailed fashion.

24 My testimony today is going to focus
25 specifically on the monitoring program that we are

1 recommending.

2 The FSA record clearly demonstrates that
3 the expanded power plant will cause significant
4 impacts to the marine biology of Elkhorn Slough.
5 I'm supported by saying that the entrainment due
6 to the Moss Landing Power Plant project cooling
7 water system will result in the loss of
8 essentially all pelagic organisms in the volume of
9 water entrained throughout the entire power plant.

10 These pelagic organisms are important
11 living materials that provide food from their
12 productivity for many of the creatures in the
13 harbor and the Slough eco-system. The loss of
14 this amount of productivity is significant.

15 Now, we all know that there is going to
16 be significant primary and secondary impacts to
17 the Elkhorn Slough eco-system, and that these
18 impacts will occur over the lifetime of the plant.
19 However, as noted in the PMPD, these secondary
20 impacts associated with entrainment have not been
21 studied.

22 For the record, the initial FSA called
23 for a monitoring program to determine the actual
24 impingement and entrainment losses associated with
25 the unit. However, in the final PMPD it was

1 stricken. The errata basically did not include
2 that. So we are strongly urging the CEC to
3 reestablish the monitoring program as a condition
4 of certification that you initially looked at.

5 This monitoring program that we're
6 discussing should really address the potential
7 impacts of the power plant expansion on the
8 Elkhorn Slough eco-system, and should include both
9 a pre- and post-operational phase. We suggest
10 that a two year -- two years of baseline data be
11 collected, and then before it -- that's before the
12 units one and two come on board, and then be three
13 years of data after the units are operational.

14 This monitoring program should focus on
15 the potential eco-system impacts associated with
16 entrainment. At a minimum, the monitoring program
17 should include, one, a biomass assessment; two,
18 primary productivity assessment; three, a
19 diversity index; four, analysis of physical
20 parameters, such as temperature, salinity,
21 nutrients, and presence of contaminants. Five, an
22 assessment of populations of certain appropriate
23 proxy species at a variety of these levels.

24 Now, as we've raised this in the past,
25 we're very concerned about the entrained species

1 that went unstudied in the original 316B resource
2 assessment, and with the secondary impacts. For
3 example, the entrained impact for several cap
4 species were analyzed, but the impacts to the
5 clams and other invertebrates were not assessed.
6 And invertebrates consume larvae and in turn
7 constitute a critical element in the food chain,
8 serving as prey for other animals, including
9 otters. And they really do need to receive
10 further assessment.

11 The details of this plan should be a
12 joint effort, and we are recommending that the
13 Elkhorn Slough National Estuarine Research
14 Reserve, the Monterey Bay National Marine
15 Sanctuary, the California Department of Fish and
16 Game, and the California Coastal Commission all
17 work to assess these details, and then to help
18 develop a program that can be very meaningful.
19 And then to work with the local scientific
20 community to implement this monitoring program.

21 We're proposing that the Applicant pay
22 \$750,000 a year over a five year period to perform
23 this necessary research, and one of the entities
24 that we feel would be in a very good position to
25 administer these funds would be the Monterey Bay

1 Sanctuary Foundation.

2 It's our understanding that if you look
3 at other monitoring programs of similar size, that
4 this is a very reasonable amount of money to ask
5 for. Looking at Morro Bay, just their impingement
6 studies costs \$250,000 per year, and the
7 monitoring at the Diablo Canyon plant costs
8 upwards of \$1.25 million.

9 We really feel that the \$750,000 a year
10 that we're requesting for the monitoring program
11 is very modest. It represents less than one
12 percent of the overall capital cost of the
13 expansion project.

14 We also feel that this program, this
15 monitoring program, will help address the
16 significant unanswered questions that many of us
17 in this room have been bringing up about whether
18 the power plant is addressing the Elkhorn Slough
19 environment, and can certainly help guide the
20 future for any kind of management decisions.

21 I know that Duke has been a good
22 neighbor. When PG&E sold to Duke, there has been
23 a tremendous amount of outreach in the community.
24 I feel that Duke Power certainly does not want to
25 be viewed in the community as someone going in

1 there and negatively impacting the environment.
2 The studies that we have learned about through
3 this whole process, we know that there are
4 significant impacts, but we do not know the
5 secondary impacts, and we don't know what's
6 happening with the food chain.

7 I think what we're asking for is a very
8 reasonable approach to find out what those impacts
9 are, and then later, when we need to make
10 management decisions, we'll have that
11 comprehensive data that is necessary both for Duke
12 and for the community to feel reassured that there
13 is either, A, no impacts that we're concerned
14 about; or, if there are these impacts, that we can
15 make some adjustments to the permits and to the
16 future productivity of the plant.

17 In closing, we really believe that in
18 monitoring over a limited period represents an
19 extremely important yet modest effort and
20 approach, and it is very necessary to ensure that
21 we are truly protecting the Elkhorn Slough eco-
22 system and the Monterey Bay.

23 Thank you.

24 HEARING OFFICER FAY: Thank you.

25 Jim Curland, from the Friends of the Sea

1 Otter. Thank you.

2 I'm not going to reiterate what Vicki
3 just mentioned, as we are one of the groups that
4 are signed on to the letter that Vicki just
5 referred to. I do have three points that I want
6 to bring up.

7 One of them we've brought in past
8 hearings, and I've had conversations with Wayne
9 Hoffman about, and that is that the Section 7
10 consultation requirement for the fact that the
11 southern sea otter is a listed species, the letter
12 that was sent by Fish and Wildlife Service was
13 dated February 1st, and the biological resources
14 errata was submitted on -- three months later, or
15 thereabouts. So we have concerns.

16 We've been talking with the Ventura
17 field office about possibly a reinitiation of that
18 Section 7 consultation, because how could the
19 Service have accurately assessed whether this
20 project would have impacts on the sea otter
21 without seeing the results of the biological
22 resources errata. So, again, we're in talks with
23 the Ventura field office to see about reinitiating
24 that.

25 The other point, just as a follow-up to

1 the mitigation or monitoring program, is the idea
2 that pre-expansion, there is quite a bit of sea
3 otter data out there on foraging efficiency in the
4 harbor, as well as in the Slough. And we would
5 just like to see that the -- this monitoring
6 program takes into account data that could be
7 gained or gotten after the expansion, and -- and
8 monitor all along the sea what these impacts are
9 on sea otter foraging efficiency following the
10 expansion.

11 And then the last point that I'd like to
12 make, and I brought this up at a couple of
13 hearings ago, and Mr. Douros sort of referred to
14 this, about the confounding factors associated
15 with the thermal discharge on the near shore eco-
16 system. And that -- I believe it was Richard
17 Anderson that said at this hearing that it's
18 virtually impossible to assess what the impacts
19 will be on the near shore eco-system because of
20 these confounding factors, but therefore they're
21 still concluding that there is no significant
22 impact.

23 And when I raised that question, how can
24 they come to the conclusion of no significant
25 impact if they can't do the studies, Pete

1 Raimundi, who's I believe a consultant, turned
2 around and said that's a good question, but as of
3 yet, we really haven't heard a good answer as to
4 how that conclusion can come -- come about.

5 So I would like to see somebody address
6 that, and how they could come with a conclusion of
7 no significant impact if the studies can't be done
8 to assess these impacts on the near shore eco-
9 system.

10 Thank you.

11 HEARING OFFICER FAY: Thank you.

12 And Kaitilin Gaffney, from the Central
13 Coast Branch of the Center for Marine
14 Conservation.

15 MS. GAFFNEY: Good morning. I am
16 Kaitilin Gaffney, with the Center for Marine
17 Conservation. And our organization was also one
18 of the co-signers of the letter that Vicki Nichols
19 submitted. And I'm going to focus my comments on
20 the mitigation plan, although our organization
21 certainly supports the issue she raised about the
22 need, dire need for ongoing monitoring to
23 understand what the true impacts of the plant will
24 be once it's in operation.

25 Regarding the mitigation plan, we've

1 raised concerns about the lack of specificity in
2 the plan, going back to at least June, when the
3 mitigation plan became available to us. And I
4 would like to add my voice and the voice of the
5 other co-signers to that letter to -- to those of
6 Mr. Douros and Mr. Bowen, the Coastal Commission,
7 the Monterey Bay National Marine Sanctuary. We
8 share their concerns that the mitigation plan
9 that's been proposed really is just too vague to
10 give us, and to give the public, any assurance
11 that the identified significant adverse impacts
12 associated with this project are going to be
13 mitigated.

14 What we have is a -- essentially
15 commitment from the Applicant to provide funding
16 that would be used in the Elkhorn Slough
17 watershed, with a plan to be developed in the
18 future. And we simply don't believe that's
19 adequate. We think that as part of the project,
20 as part of the project approval, we need to know
21 what the mitigation is going to be, because we
22 cannot be assured that significant impacts will be
23 mitigated unless we know how, now. It's not good
24 enough to say that we will figure that out later
25 and trust us, it'll come out fine in the end. We

1 really think that needs to be a part of this
2 process.

3 Specifically, we want to see performance
4 standards, criteria for success. How do we know
5 when we've successfully mitigated the entrainment
6 impacts? Currently, again, we have a commitment
7 of financial compensation, so presumably we are
8 successful when we have spent \$7 million. We
9 don't think that that constitutes environmental
10 mitigation. So what we're asking is that as part
11 of the project approval, we see more detail in
12 terms of what the mitigation will be, and linkage
13 between that mitigation and the impacts.

14 And we understand that we've heard
15 testimony from some of the scientists involved in
16 this case that it's very difficult to make direct
17 links between entrainment impacts and loss of
18 productivity, and some of the activities that have
19 been proposed, such as erosion control. We would
20 suggest that we need to do the best we can to make
21 those links, and if those links really cannot be
22 made, then those activities cannot be considered
23 mitigation.

24 If you can't link the activities to the
25 loss of productivity, you cannot say that those

1 activities will resolve that problem.

2 So just in conclusion, we also believe
3 that we need to do monitoring so that we know what
4 the true -- true impacts are post operation. It's
5 one thing to have estimates of what we think the
6 impacts will be, but we need to take a look
7 afterwards and make sure that we're right. We're
8 all, I think everyone in this room shares concern
9 for the Elkhorn Slough. You know, the Applicant,
10 all of the agencies and everyone here. We would
11 just want to make sure that as this project goes
12 forward, that we do our best to protect those
13 absolutely priceless resources.

14 Thank you.

15 HEARING OFFICER FAY: Ms. Gaffney, hold
16 on a minute.

17 MS. GAFFNEY: Yes.

18 HEARING OFFICER FAY: Do you have
19 specific recommendations as to how Bio-7 could be
20 changed to improve -- to address the concerns you
21 have about the mitigation plan?

22 MS. GAFFNEY: Sure. I think that Bio-7
23 essentially -- actually, Bio-7 is a step in the
24 right direction. We're happy to see that some of
25 our suggestions that we've raised earlier have

1 been incorporated into the PMPD.

2 But basically, we needed to go a level
3 deeper in detail. Bio-7 says that we will bring
4 agencies together to develop the performance
5 standards and criteria. That should be in the
6 condition of certification. What are our goals.
7 If we are saying that we want to prevent, you
8 know, X amount of erosion on X number of acres,
9 and that's one of our mitigation plans, that
10 should be in the condition of certification. That
11 shouldn't be deferred to a process that we will do
12 later, after we've already approved the project.

13 So we want to see the specific goals for
14 mitigation in the condition of certification.

15 HEARING OFFICER FAY: Well, the
16 condition --

17 PRESIDING MEMBER KEESE: Let me --

18 HEARING OFFICER FAY: I was just going
19 to read from the PMPD. These -- this is from the
20 condition, not the verification. So this is --
21 this cannot be changed without the full
22 Commission's approval.

23 These funds will be used for the
24 objective of increasing the biological
25 productivity of the Elkhorn Slough watershed

1 through acquisition, permanent preservation, and
2 restoration of habitat, et cetera.

3 So the objective is very clearly laid
4 out.

5 MS. GAFFNEY: Right.

6 HEARING OFFICER FAY: And the concept,
7 and, you know, we could certainly improve on it, I
8 suppose, but the concept is steps that logically
9 go towards meeting that objective. So anything
10 that would increase the biological productivity of
11 the Elkhorn Slough is a measurable step that would
12 be in the right direction.

13 For instance, acquisition might be one
14 thing if the acquisition had strong evidence that
15 it would help increase productivity. The
16 prevention of some pollution source would be a
17 step if it would show that it could help
18 biological productivity.

19 MS. GAFFNEY: Right. And the problem is
20 that those decisions will be made later, outside
21 of the permitting process, and we won't be sitting
22 at the table able to comment and participate in
23 that. So --

24 PRESIDING MEMBER KEESE: Well, I --

25 MS. GAFFNEY: -- can I --

1 PRESIDING MEMBER KEESE: -- on the
2 contrary, I expect you will be in that. My
3 question would be are you asking me, who's going
4 to write this, to put the -- put the alternatives
5 up on a dart board and throw a dart, and pick one?
6 Or would you prefer that the objectives be set out
7 and that the advisory committee, on which you will
8 probably be sitting as a rep --

9 MS. GAFFNEY: I have no indication of
10 that whatsoever.

11 PRESIDING MEMBER KEESE: Well, the --
12 the specific environmental groups are not listed,
13 but the -- there is a broad listing of the groups,
14 the Sanctuary, there is a broad listing of groups
15 and other environmental groups who will
16 participate and attempt to achieve these
17 objectives. You would like --

18 MS. GAFFNEY: Like a public process.

19 PRESIDING MEMBER KEESE: -- me to pick
20 up -- you would like me to pick the -- pick the
21 mitigation measures you want?

22 MS. GAFFNEY: Well, I would hope that
23 that would come with Staff's expertise, with the
24 offered expertise of agencies such as Department
25 of Fish and Game, such as the Coastal Commission,

1 who have offered --

2 PRESIDING MEMBER KEESE: In --

3 MS. GAFFNEY: -- their expertise.

4 PRESIDING MEMBER KEESE: -- in advance
5 of choosing the objectives.

6 MS. GAFFNEY: That that should be part
7 of the project. That saying that we will figure
8 out what the mitigation measures are later, after
9 we've already approved the project, splits the
10 mitigation from the project approval, and that
11 that's not permissible.

12 Typically, if you're looking at a -- for
13 example, a land use project outside of the energy
14 context, if you have an impact you have a
15 mitigation, and that mitigation is specific, and
16 that's in the EIR, and the public is able to look
17 at the mitigation and decide do we think that
18 fits, do we think that covers the impact, and
19 comment on that.

20 We're not able to do that in this
21 process, because what we have is a fairly vague
22 goal of increasing productivity, or restoring lost
23 productivity. And in -- in the condition of
24 certification, Bio-7, for example, it refers to
25 the Elkhorn Slough watershed conservation plan,

1 and specifically says that category three is the
2 type of activities that -- that we see as
3 appropriate.

4 Well, included in category three is, for
5 example -- I'm not saying that this is what would
6 be selected, but one of the things that's in there
7 is acquisition of upland parcels in the Elkhorn
8 Highlands, and that the reason that the
9 conservation plan cites for that being an
10 important thing to do is terrestrial habitat
11 conservation and view shed protection.

12 Obviously, it would be our position that
13 that would be a totally inappropriate type of
14 activity to fund with these moneys. Maybe that's
15 not something that the committee would select,
16 because it doesn't have that tie to productivity.
17 But we want that kind of discussion to occur in
18 the PMPD so that we have that level of detail and
19 the public can be comfortable that we're really
20 going to see these impacts mitigated fully.

21 HEARING OFFICER FAY: To respond to
22 that, the -- just so you know the thinking that
23 went into the reference to that section of the
24 Elkhorn Slough conservation plan. We were
25 concerned with the points you made earlier that

1 there wasn't enough specificity. It's very
2 difficult in this situation to make the best
3 judgments for the Elkhorn Slough right now, before
4 the power plant is licensed. You either delay
5 licensing indefinitely, in which case there might
6 not be the money available, or you make the
7 decision now to do something that will address the
8 Slough, but is more flexible so that it can meet
9 the needs of the Slough as those become obvious.

10 So setting up this commission was an
11 effort -- or this advisory team, was an effort to
12 do the latter. It does include environmental
13 organizations, it's specified. Not which ones,
14 but, you know, stay in touch with Dick Anderson to
15 be in on that.

16 As to the upland areas, you should just
17 know that the Commission's soil and water resource
18 consultant disagrees with you strongly, because he
19 believes that some of the worst impacts on the
20 Elkhorn Slough are coming from Elkhorn -- from
21 upland areas, and that addressing upland concerns
22 can, in many cases, help increase biological
23 productivity.

24 Now, I don't want to argue that today.
25 But that is the kind of discussion that this

1 advisory team should engage in as the priorities
2 are set.

3 MS. GAFFNEY: And I would agree that
4 there are certain types of upland activities that
5 may be appropriate. Those linkages may be able to
6 be proven sufficiently that those activities could
7 be used as mitigation.

8 There are other kinds of upland
9 activities that would not be appropriate. So, I
10 mean, that's the kind of honing down that --

11 HEARING OFFICER FAY: Sure.

12 MS. GAFFNEY: -- we would like to see
13 occur in the context of the PMPD, and not deferred
14 to a different decision making body in the future.

15 I'm not saying that we need to know, you
16 know, exactly which parcel number we're going to
17 take a bulldozer out on, you know, before the PMPD
18 is approved. But I think we still need to get
19 closer to that specificity, and I think this
20 issue, you know, was also raised by a couple of
21 agencies with expertise in restoration work.

22 So I don't think we're asking for
23 anything that's, you know, too far out there. I
24 think we're just asking for some assurance that
25 the identified significant impacts will truly be

1 mitigated. And with the closest fit possible,
2 recognizing that we can't -- we will not get a
3 perfect fit, but we want it to be as close as
4 possible.

5 HEARING OFFICER FAY: Okay. Thank you.

6 I'll just mention for everybody's sake
7 that I think it's very important to stay focused
8 -- in terms of Bio-7, to stay focused on that
9 objective. The Committee felt that that was the
10 best way to really define the raison d'etre for
11 that condition. It's to increase biological
12 productivity in Elkhorn Slough, and not
13 necessarily to buy land, not necessarily to take
14 other specific steps, but to take those steps,
15 whatever they may be, that will help meet that
16 objective.

17 All right. The next speaker is Steve
18 Shimek, from The Otter Project.

19 And we -- we do have a letter from the
20 groups, and I think your signature on, is that
21 correct?

22 MR. SHIMEK: I -- I don't -- I didn't
23 submit that.

24 HEARING OFFICER FAY: Okay. You address
25 --

1 MR. SHIMEK: So I don't know.

2 HEARING OFFICER FAY: Oh, I see. You --
3 you address the same two topics. Yes, you are --

4 MR. SHIMEK: It's still morning, so --

5 HEARING OFFICER FAY: -- you are listed
6 as a signator on that letter.

7 MR. SHIMEK: Yes.

8 Chairman Keese and Members of the
9 Commission Staff, and Duke, thank you for the
10 opportunity to offer additional comment on the
11 Energy Commission -- to the Energy Commission
12 regarding Duke Energy's Moss Landing Power Plant
13 Project.

14 Just for a little bit of background.
15 The Otter Project is a 501 C3 non-profit with
16 about a thousand members. Actually, a little over
17 at this point. We offer volunteer and financial
18 support, actually, to research and recovery
19 efforts for the California sea otter. And we're
20 deeply concerned with the health of the near shore
21 eco-system. And, I mean, that's -- that's so
22 important to us.

23 And in fact, that's why many of our
24 board participate. It's not because of the otter
25 at all, it's because they feel that the otter is a

1 critical component of the system.

2 We are one of the co-signers of the
3 letter that's been submitted to you by Save Our
4 Shores and the Center for Marine Conservation,
5 And Friends of the Sea Otter, and the Ventana
6 Chapter of the Sierra Club.

7 The letter spells out exactly the
8 changes we would like to see incorporated into the
9 CEC permit of the Duke project.

10 Here I'd like to underscore and clarify
11 two points, the need for linkage and the need for
12 monitoring of basic parameters in the Elkhorn
13 Slough eco-system.

14 First of all, the linkage. And we're
15 spending quite a bit of time on that, so, you
16 know, sorry about that, but that's what we feel is
17 very important. We believe we've seen a great
18 deal of slippage from the original intent of the
19 mitigation package outlined in the FSA. Language
20 in the FSA includes statements such as the loss of
21 13 percent of fish larvae will require replacement
22 of wetland in order to replace the loss in
23 productivity of the harbor and Elkhorn Slough eco-
24 system. That's a quote directly from the FSA.

25 Another quote. The loss in productivity

1 can be replaced through wetland restoration type
2 actions. That's another quote directly from the
3 FSA.

4 Now we've slipped to well, we're going
5 to do some work in the highlands, and we think
6 that that's really going to work. But your FSA
7 talks about wetland restoration. And it talks
8 about the need for that. We've slipped from that
9 to where we are now.

10 CEC Staff is now using broader language
11 to discuss mitigation projects, such as efforts to
12 enhance and improve the Elkhorn Slough
13 environment. We think improving the environment
14 is a great deal. We think it's great. But is it
15 addressing the impacts of the power plant. And
16 just to say productivity is not good enough. And
17 now I'm setting the benchmark maybe unattainably
18 high. I realize that. But here's what we're
19 talking about.

20 When you take water and you basically
21 kill a lot of the stuff in it, and then you make
22 more habitat, let's say even in what's required or
23 what's stated in the FSA, that is a totally
24 different type of productivity than the
25 productivity that you've impacted. You know,

1 planktonic productivity is not the same as
2 pickleweed. It just it not the same thing.

3 And to give you another point of view.
4 Here's a single example that we've run by a few
5 biologists, including John Pierce, who is
6 president of the California Academy of Sciences
7 and probably one of the most noted near shore eco-
8 system biologists in the world. And then we also
9 ran it by one of the mammologists here at Moss
10 Landing Marine Labs.

11 Intuitively, we feel that entrainment
12 will certainly reduce the number of clam larvae,
13 you know, that are available for recruitment in
14 the Elkhorn Slough. And entrainment could reduce
15 the amount of planktonic food available for the
16 existing clams. If clam stocks decline, there
17 will be less food for sea otters and therefore
18 less sea otter caring capacity.

19 Now, we did not look at secondary
20 impacts in your biological reports. You've, in
21 our view, kind of conveniently ignored secondary
22 impacts. But intuitively, this is all very
23 correct, and we've run it by a number of
24 biologists and they all believe that it's true.

25 So if you purchase land in Morro Cojo,

1 where there are no sea otters, the land is cheaper
2 there, and even if you restore wetland stuff,
3 geographically you have removed your mitigation
4 from your impact.

5 HEARING OFFICER FAY: Excuse me, Mr.
6 Shimek, because I want to protect everybody's use
7 of time. There's nothing in the decision that
8 allows the purchase of land in Morro Cojo, so
9 that's -- that's not relevant to what we're
10 focusing on. That was not part of the mitigation
11 at all, it's not allowed.

12 MR. SHIMEK: It's part of the Elkhorn
13 eco-system. Am I not correct?

14 HEARING OFFICER FAY: Well, the example
15 --

16 MR. SHIMEK: I mean, are you talking
17 about that arm of Elkhorn Slough, or are you
18 talking about that arm of Elkhorn Slough?

19 HEARING OFFICER FAY: Yeah. I think the
20 Section 3 steps in the conservation plan were just
21 placed out as illustrative of some possibilities.
22 But the language is specifically clear to Elkhorn
23 Slough, so I -- I'd just like to keep it focused
24 on that.

25 MR. SHIMEK: What I'm pointing out is

1 that there are sections of the Slough that -- that
2 are geographically removed from the impacts. And
3 so we're asking that not only you look at
4 productivity, but you also try and do mitigation
5 measures as geographically tied as possible to the
6 impact.

7 We're not -- we're not asking for more
8 money. We're asking for more detail. We're just
9 asking that the projects picked from the Elkhorn
10 Slough watershed conservation plan, that you've
11 basically got a laundry list of projects, and we
12 would like to see those projects ranked with the
13 ones that are -- best mitigate the impact. All
14 right, that's what we're asking for.

15 PRESIDING MEMBER KEESE: Let me just say
16 that --

17 MR. SHIMEK: Okay.

18 PRESIDING MEMBER KEESE: -- that in the
19 PMPD, the advice on that was left to a group which
20 includes the Monterey Bay National Marine
21 Sanctuary, the Elkhorn Slough National Estuarine
22 Research Reserve, Monterey County, the Elkhorn
23 Slough Foundation, and environmental
24 organizations.

25 MR. SHIMEK: Right.

1 PRESIDING MEMBER KEESE: And advice on
2 that subject was left to them.

3 MR. SHIMEK: And we're simply saying --

4 PRESIDING MEMBER KEESE: And that's not
5 good enough.

6 MR. SHIMEK: We're saying that that's
7 not good enough. We want to see it up front.
8 Simply put.

9 PRESIDING MEMBER KEESE: All right. So
10 you'd be content with whatever I wrote.

11 MR. SHIMEK: Pardon me?

12 PRESIDING MEMBER KEESE: Whatever I
13 write is okay.

14 (Parties speaking simultaneously.)

15 MR. SHIMEK: We're saying --

16 PRESIDING MEMBER KEESE: -- rather than
17 rely on this group of experts to choose what will
18 work, you'd like us to --

19 MR. SHIMEK: We're not saying --

20 PRESIDING MEMBER KEESE: -- put
21 something in there.

22 MR. SHIMEK: -- we're not saying you.
23 We're saying that Staff and the expertise that
24 Staff has, we're saying all those people, we're
25 saying that that becomes a part of -- of the

1 project which then actually we have the chance to
2 look at again, I would assume. Or are you just
3 saying that you're going to, to use your analogy,
4 take a dart board. We hope it would be more
5 intelligent than that, that you would, you know,
6 throw some good darts and maybe pick some projects
7 that have direct linkages to the impacts of the
8 plant.

9 We're not asking for more money. We're
10 not -- we're asking for more detail. Did I answer
11 your question?

12 PRESIDING MEMBER KEESE: Yes. You're
13 asking us for more detail in advance, where in an
14 ongoing mitigation project there could be the
15 possibility, once this plant is in operation, to
16 know what its impacts are, and to vary the
17 mitigation measures. You -- it sounds to me like
18 you want this plan set in concrete, versus a plan
19 advised by yourself and other groups that care
20 about this slough --

21 MR. SHIMEK: I'm saying that --

22 PRESIDING MEMBER KEESE: -- and will be
23 continuing to do scientific work in this slough in
24 the future, as they have in the past.

25 MR. SHIMEK: Right. What we're -- what

1 I'm saying is, is that there are some things that
2 are within what you -- you have pinpointed, you
3 know, as that section of the water conservation
4 plan, that include things like view shed. What in
5 the heck does view shed have to do with impacts on
6 -- on, you know, planktonic productivity.

7 HEARING OFFICER FAY: Again, keeping it
8 relevant. The condition requires that everything
9 that be done meet the objective. So if view shed
10 does not meet the objective of increasing
11 biological productivity, it cannot be done.

12 MR. SHIMEK: And what I'm --

13 HEARING OFFICER FAY: That language is
14 already in the decision.

15 MR. SHIMEK: Right. And what I'm saying
16 is to address that. What I'm saying is I would
17 like to see two more things, and that is
18 geographic proximity, and I would like to see the
19 words that we are first looking at planktonic
20 productivity versus, you know, just strictly, you
21 know, any kind of productivity.

22 I mean, are we -- are we going to go out
23 and plant eucalyptus trees? I'm trying to push
24 you guys as close as possible to the impacts.
25 That's what I'm trying to do.

1 All right. The second thing is, is
2 monitoring the basic parameters of the Elkhorn
3 Slough eco-system. As stated in the FSA, the
4 impacts of the entrainment are significant. If
5 the Elkhorn Slough eco-system begins to change,
6 regardless of the cause, wouldn't we want to know
7 that. Wouldn't we want to know.

8 We trust that the CEC shares our concern
9 for Elkhorn Slough and shares our desire to
10 monitor changes in the Elkhorn Slough through the
11 development of this project. The FSA itself
12 called for monitoring the program to determine the
13 actual impingement and entrainment losses of the
14 new project. However, as stated earlier, the
15 monitoring requirement was stricken out of the
16 errata of the FSA and is not included in the PMPD.

17 We strongly urge the CEC to reestablish
18 a monitoring program as a condition of
19 certification. We further note that monitoring of
20 the thermal plume, an impact deemed insignificant,
21 is receiving funding, while monitoring of the
22 significant impacts of entrainment are not
23 receiving funding. That doesn't really seem
24 consistent to me.

25 Money -- money for monitoring should be

1 new money, not funds taken from the mitigation
2 plan. The Monterey Bay National Marine Sanctuary
3 is working on an eco-system monitoring program for
4 both the Slough and the adjacent sanctuary. It
5 would be relatively easy, Mario Tonberi is the
6 contact. It would be relatively easy to tease out
7 those components that would be of use in a Slough
8 monitoring program. We estimate that \$750,000 per
9 year for five years should be enough funds to
10 implement this monitoring program. The
11 conservation -- the conservation organizations
12 suggesting this monitoring do not receive a dime.
13 We're not stepping up to the trough here. The
14 money is going to flow to the capable research
15 institutions in the Monterey Bay Area.

16 We strongly object to the CEC Staff and
17 your -- some of your biologists' recommendation --
18 notion that these systems are somehow too complex
19 to monitor. While it's true that we have no pre-
20 plant baseline data, that in no way -- in no way
21 inhibits our ability to monitor change from this
22 point forward. And, in fact, some of the datasets
23 that already exist go all the way back to the
24 1970's. So you're going to be just using some of
25 the existing data. We're not talking about

1 augmenting that data at all, but you're going to
2 be able to look at power plant, shutdown of some
3 of the units, rebuilding. You're going to be
4 looking -- able to look at a good set of data.

5 This is an important and doable task.
6 Why wouldn't we want to know? I mean, that's --
7 that's my question. Why wouldn't we want to know
8 if the Slough begins to change.

9 We hope you will seriously consider
10 these requests and will amend the PMPD to include
11 the need, a closer need and specificity between
12 the linkage, between project impacts and the
13 mitigation, and to the need for monitoring of
14 basic parameters of the Elkhorn Slough system.

15 Thanks. I have copies of my letter.

16 HEARING OFFICER FAY: Thank you. Please
17 be sure Ms. Mendonca has a copy so it can be
18 docketed.

19 Donna Solomon.

20 MS. SOLOMON: I appreciate you taking
21 the time to come out to Moss Landing and to visit
22 with us, and also for this opportunity to speak
23 with you.

24 I only have a few notes that I really
25 want to say rather quickly, because we just found

1 out about this. I'm with Solomon Live Fish, I'm a
2 part owner there. As well as the West Coast
3 Shallow Water Live Fishery Alliance, I'm a
4 representative of them because I'm alliance
5 coordinator.

6 But we do have many concerns. We, like
7 I say, we just -- we just found out about what was
8 going on with Duke Energy, and that's real sad
9 considering here we are, a community member. We
10 live here, as well, my -- my family does. And a
11 lot of the problems are that the fisheries right
12 now are devastated over the reduction -- the
13 capacity reductions, let alone the reductions in
14 fishing allowances that we are presently given.
15 And we've been going to all of these things,
16 finding this out.

17 This also shows a high neglect in the
18 obligation that Duke Energy had to notify its
19 neighbors. If the harbor alone had been notified,
20 they would've notified all business people, as
21 well as all community members.

22 Then you see the vagueness of what I'm
23 hearing today from all the members here, the
24 representative of well diverse community members.
25 If I were on your panel, I would automatically not

1 permit this. It has not been dealt with properly,
2 in my opinion. I'm listening to everybody,
3 nobody's been notified. This is sad.

4 I'm looking at the --

5 HEARING OFFICER FAY: Let me just -- let
6 me just say that generally, the articles that are
7 in your local newspaper appear on my desk, and --
8 and I would say that has averaged over one per
9 week for the last year and a half. Maybe nobody
10 reads the paper. I --

11 MS. SOLOMON: Well, we read the paper,
12 but there hasn't been as much --

13 HEARING OFFICER FAY: -- the headlines.

14 MS. SOLOMON: -- as what I'm listening
15 to. I have understood part of the thermal
16 components --

17 HEARING OFFICER FAY: You didn't
18 understand that the Moss Power Plant was being --

19 MS. SOLOMON: We knew of some expansion.

20 HEARING OFFICER FAY: -- redone?

21 MS. SOLOMON: We also knew that they
22 were taking down a lot of things. And that --
23 what we understood would be totally different. It
24 would not devastate the sanctuary at all.

25 HEARING OFFICER FAY: Okay.

1 MS. SOLOMON: And now I'm hearing yes,
2 it will. And in my type of business, as a live
3 fish broker, and I am the only stable broker there
4 is in the central coast for the fishermen of this
5 type. What happens in the sanctuary does also
6 affect outside, and so does the outside with the
7 sanctuary. What normal temperatures have been,
8 except for during El Nino time, in the waters that
9 our fishermen go, it's normally between 48 and 52
10 percent -- I mean, 52 degrees. Right now they're
11 at 58 degrees.

12 What we're seeing is, again, not as
13 devastating as when El Nino hit. When El Nino hit
14 and we had those warm temperature airs, what we
15 found is normal fish that looked -- well, a nice
16 size -- I can't -- I don't have a fish with me.
17 They're waiting to be delivered right now, that's
18 why I asked to hurry and quickly come up here.
19 But one that looks -- like a one pounder would --
20 would like a toothpick during El Nino. It was
21 really bad. Our fishermen weren't even catching
22 them. We were putting them back into the waters
23 because our company would not take them. They
24 looked that bad. Anything that was ten inches was
25 coming in at .70, .60, in -- in pounds, instead of

1 a one pound fish.

2 So the temperature warmth can be
3 devastating to all your marine life. And when
4 you're talking that right now we're very
5 concerned, even the fishermen are very concerned
6 over our nurseries that are out there in the ocean
7 and in the reef areas, as well as -- we checked it
8 against other things.

9 This is the first year that we've been
10 jazzed over the fact, to put it very heartfelt,
11 jazzed over the fact that just at the pier level,
12 sardines are coming in that little harbor like
13 crazy. Little fish, for the first time in three
14 years, baby bolena. This is a deep water fish. I
15 should say 80 feet, 100 feet, it's deep water in
16 our fishery. So when you go to 80 feet, and
17 you're finding bolena, that's a good sign. When
18 you're in our harbor seeing little -- little baby
19 bolenas that are only this big, you get jazzed
20 over it because that means it's reproducing again.

21 Just a few months ago we saw tons of --
22 how can I put it -- I had the words before I came
23 up here, isn't that something. But I've never had
24 to clean but maybe once every three months my
25 tanks. I'm having to clean my tanks once a week

1 now. That's how rich everything is in that
2 harbor. And it wasn't there for three years.
3 Now, it is.

4 My concern is that this thermal
5 discharge is going to increase those water
6 temperatures again to hurt what just began after
7 three and a half years coming in. And that could
8 save our fisheries and our fishing community,
9 because that is our concern. This is something
10 that also, since we use those waters and we have
11 just presently put in a 30 year lease -- actually
12 a year and a half, but we put in a 30 year lease
13 to be in this new cannery building that's being
14 formed. We use the ocean water, the harbor water
15 for our fisheries, and then we put it back in.

16 I can't use that water if it goes up
17 much higher. Which means I go out of business.
18 And I will have lost all -- everything that we
19 have put into this fishery. And I'm not talking
20 moneys. The heck with that. I'm talking time,
21 value, care, concern over everything that's out
22 there.

23 You can't replace fishermen. Right now,
24 the only reason why our -- our fisheries are going
25 to be increased in the capacity amount that they

1 are allowed to take out of the fishing waters, is
2 because they realize that we have already been
3 reduced in our fishing industry from 100 percent
4 what we were of October, to six percent of what we
5 are today. If anymore devastation goes on in
6 those waters, any, not only of the -- the mammals,
7 but of the fauna, it's gone.

8 Until these things are really decided
9 upon, until these impacts are really shown,
10 besides business people, not just as myself but
11 the fishing community itself, how many people more
12 are we going to lose because there's nothing out
13 there. Because we can't go out there. And
14 because our waters are -- are way bad. These
15 things all have to be looked at.

16 Mainly I think that I also have been --
17 this is something I was told. Unfortunately I --
18 I have not seen it in any of your works. But that
19 any devastation that you felt might have been done
20 in the estuary could have been due to the fact
21 that it's -- the marine life is evenly spread out.
22 Marine life is not evenly spread out. Just as we
23 as human beings tend to be in certain areas, so
24 does the marine life. The marine life may go out
25 of its own residential area, and that may be a

1 five by five square foot. It may go ahead out of
2 that to go ahead and -- and reproduce, or to lay
3 its eggs, but it does not stay in just one area.
4 They're all over in there.

5 But they do have, especially in
6 nurseries, they do have areas where they hide.
7 There are leopard sharks out there, and I'm sure
8 my little baby bolenas that are out there, or baby
9 gopher cod, or whatever's out there, does not want
10 to be eaten by them. So they do stay in hiding
11 areas. What areas you're going to impact is very,
12 very important.

13 We cannot lose our marine life, and we
14 cannot -- and that includes not just the mammals,
15 but the fauna. I appreciate your time.

16 HEARING OFFICER FAY: Thank you.

17 (Applause.)

18 HEARING OFFICER FAY: All right. The
19 next speaker, Ray Newkirk, Editor of the Green
20 Press.

21 MR. NEWKIRK: I'll make this quick. I'm
22 not much of a public speaker. But I would just
23 like to say that, as it says there, I'm the Editor
24 of Green Press, and I've talked to a lot of our
25 readers about this process. And everybody I talk

1 to is very distrustful of what goes on here.

2 It seems that a lot of -- a lot of the
3 problems here are not really being addressed, such
4 as the possibility of sucking down 1.2 billion
5 gallons of water per day, and releasing it back
6 into the bay heated. It just sounds like a very
7 irresponsible thing to do to the community here,
8 and the -- this lady, who depends on the fishery
9 being healthy here, and the wildlife that are
10 included in the estuary out here.

11 I've been into Elkhorn Slough for many
12 years, and, you know, just loving it. I've
13 watched it evolve, and I've seen life cycles come
14 and go. I've seen the otters have good years and
15 bad years, and I've seen more pelicans some years
16 than other years. And the way it's looking right
17 now, I'm seeing life actually coming back in the
18 last couple of years, and I'm terribly worried
19 that if this project goes through it's going to
20 devastate the life out there.

21 And I'm with the person who said
22 earlier, too, that if this was a new power plant
23 being put forth today, it would not be allowed.
24 So why is this expansion being allowed when we
25 don't have all the impacts and their possible

1 mitigation completely understood yet. You know,
2 this -- this should be put on hold at least
3 indefinitely until we have all the facts. And it
4 seems like it's just being ramrodded through, like
5 so many other things that happen in our, you know,
6 public procedural process, that constantly goes
7 on.

8 You know, the -- the public doesn't have
9 all the facts, and then we have very little time
10 to comment on it. And projects like this just
11 keep getting approved right and left. And it
12 seems to me that we're taking big steps backwards
13 constantly. You know, why aren't we focusing more
14 on energy conservation and more efficient use of
15 it, and, you know, more public education on how to
16 do that better, instead of producing more power,
17 more power, more power.

18 You know, I mean, this is supposedly a
19 low growth area. I know there's a lot of, you
20 know, a lot of debate about that, too, for many
21 reasons. But, you know, we have to really realize
22 that we're in a gem of an area here. This is
23 someplace we cannot hope to save and, you know,
24 come back to next year and see it be the same if
25 we keep dumping stuff into it. You know. And all

1 the toxins that are going to be out here that Mr.
2 Dilworth was talking about, that's just crazy.
3 It's completely crazy.

4 You know, we really have to do a lot
5 more study before we do anything.

6 (Applause.)

7 HEARING OFFICER FAY: Thank you.

8 Kurt Solomon, from West Coast Shell
9 Water Live Fishery.

10 MR. SOLOMON: How are you doing today.

11 I'm Kurt Solomon. As you know -- that was my wife
12 who spoke just prior to the last one.

13 I -- she probably said most of it
14 already. It's just, you know, I hear a lot about
15 this \$7 million. How does -- money doesn't
16 justify for our losses. It -- there's no way.
17 Right now, we're in such a world of hurt, as the
18 fisheries, \$7 million wouldn't be a drop in the
19 bucket compared to what we've lost.

20 There's only one way to -- you know, 13
21 percent lost again to our fisheries, that's
22 devastated our fisheries.

23 HEARING OFFICER FAY: Excuse me. We are
24 dealing with the facts that are in the --

25 MR. SOLOMON: Well, these are the facts.

1 HEARING OFFICER FAY: -- PMPD --

2 (Parties speaking simultaneously.)

3 MR. SOLOMON: These are the nurseries
4 that sustain our fisheries.

5 HEARING OFFICER FAY: Okay. You said 13
6 percent average a month --

7 MR. SOLOMON: Thirteen percent --

8 HEARING OFFICER FAY: -- averaged among
9 eight species.

10 MR. SOLOMON: Yes.

11 HEARING OFFICER FAY: Okay. I just
12 wanted to be sure you were dealing with the facts
13 --

14 MR. SOLOMON: These are shell water
15 species, what we fish.

16 HEARING OFFICER FAY: Okay.

17 (Inaudible asides.)

18 MR. SOLOMON: None of these species are
19 in our fisheries?

20 PRESIDING MEMBER KEESE: I think
21 actually we -- let's -- we can't have this
22 dialogue, unless you want --

23 MR. SOLOMON: Okay. Well, just say 13
24 --

25 PRESIDING MEMBER KEESE: It -- you may

1 have read that in the paper, too. But it would be
2 -- it would be good to look at the documents and
3 find out what we are talking about here. That's
4 not what we're talking about.

5 MR. SOLOMON: Okay. Well, 13, they're
6 already devastated, we're already -- I mean, the
7 plague has already hit us beyond repair. You
8 can't even repair what damage has already been
9 done to our fisheries.

10 I was just wondering how you justify to
11 the fishermen and the fishing industry what you've
12 done to them, and what you're doing to them.

13 Thank you.

14 HEARING OFFICER FAY: Thank you.

15 Jack Ellwanger, from the Pelican
16 Network.

17 Could you be sure that Ms. Mendonca has
18 a copy of the letter? She's right over -- yes.

19 MR. ELLWANGER: Roberta. I want to say
20 that Roberta and Bob have been very kind to us.
21 We've sought information from the Energy
22 Commission. There's been a lot of nice comment
23 about how the process has been so -- so inclusive.
24 And that's -- and I'd like to echo what Mr. Bowen
25 and others have said. You certainly should be

1 congratulated.

2 However, the public seems to have been
3 excluded. It doesn't seem to have been an
4 aggressive outreach for inclusion of the public in
5 this, and I'm speaking as -- not for the matter of
6 argument. I'm speaking as a person who's a former
7 newspaper reporter, and a executive level staff
8 person in government. And I honestly was unaware
9 of the project until two and a half weeks ago,
10 when it was brought to my attention.

11 And it was -- it was rather startling to
12 hear what was proposed, so I went out on kind of a
13 search and find mission, and kind of a discovery
14 mission, and to talk with people in Moss Landing
15 and in the Slough, and about, and see what
16 people's reactions were to this proposal.

17 And I even talked with people in Bari,
18 and the -- generally, the response was gee, we
19 don't know, we trust those people who are doing it
20 to do it right. Or, God, we didn't know it was
21 going to happen like that, or is this the fact, is
22 that the way it's going to happen?

23 So I, from -- from Bob and from Roberta,
24 I got the proposed decision and studied it. And I
25 was, frankly, really surprised that there would be

1 such flawed findings. You're talking about an
2 impact over here in the harbor of maybe 40 percent
3 of all the living organisms in a concentrated
4 place that's really the junction, it's really the
5 confluence of this slough, of the Mojo, and the
6 Elkhorn. And with the mouth of the estuary, which
7 is -- which goes all the way to the mouth of the
8 submarine canyon, into the jetty. So virtually
9 all life has to pass, kind of run the gauntlet,
10 has to pass through these intake valves.

11 And to look at what's being proposed in
12 order to mitigate, if you will -- that's a hard
13 term to kind of swallow in this context, but
14 what's being proposed as a mitigation concept is
15 really kind of hard to assimilate in light of the
16 fact that all the impact is going to happen in
17 that place, but some really fine things are going
18 to happen upland. What's going to happen upland,
19 what's being proposed is beautiful. Nobody --
20 nobody could take issue with that. That's a
21 wonderful thing. Everybody should be applauded
22 for -- for supporting that.

23 The upland of this slough goes all the
24 way back to Highway 101. You can't do enough to
25 restore the wetlands in this state of California.

1 You can't do enough to protect the watershed for
2 these kinds of invaluable, priceless wetlands.
3 You can't do enough. To do what is being asked to
4 do, or being suggested be done, is a beautiful
5 thing, and should be done regardless of what's
6 happening with this plant expansion.

7 But it doesn't leak what the impact is
8 on that harbor. And I think the problem is that
9 harbor has no jurisdiction. The Harbor District
10 didn't even know what was going on with this
11 process. Talked to boat people in there, they
12 didn't know what was going on. They got soot all
13 over their boats every morning, they said what,
14 they're going to do twice as much? That's really
15 rather surprising.

16 You go, and you look at the hatches
17 where the hot water comes up that's being
18 thermally discharged out -- right here, 600 feet
19 off the -- off the shore, you see the water
20 gushing up out of the hatches and flowing down
21 into the harbor. It's hot water. You touch it,
22 it's hot water. It's like 80 degrees. That's --
23 that's stupefying. And -- and you're talking
24 about resurrecting some lands that have some DDT
25 or some methyl bromide runoff into them to

1 compensate for that kind of occurrence? It
2 doesn't make sense. It's not linked, and that's
3 against the law.

4 The law is very clear about mitigation.
5 It says like habitat. It must be replaced. And
6 this proposal doesn't do that.

7 Our concern is about that, chiefly, and
8 we think that there are a few ways that you can go
9 about correcting that. You need to put this
10 monitoring plan that Vicki Nichols talked about,
11 you need to put that in place. That is critical.
12 You have to know what you're talking about. You
13 have to know what you're doing in there, what the
14 impact of your expansion is. And that would do
15 that.

16 The alternatives have not been studied.
17 You know, those pipes go out 600 feet. That's hot
18 water. It covers about five or six football
19 fields, and it flows right back on the shore. And
20 right there, you can look right there and see a
21 snowy plover habitat. There's got to be an
22 erosion -- but it hasn't been studied. The
23 thermal discharge has not been studied because the
24 people on the technical working group said well,
25 they studied it back in 1949 and I don't think we

1 need to study it all over again. Well, there's a
2 lot more discharge going to go on, and we know a
3 lot more biology today than we do -- than we knew
4 in 1949.

5 So, then, I'm representing about many
6 thousands of people. Ordinary people. They're
7 not biologists, they're not on institution staff,
8 they're not getting a paycheck. And they
9 certainly haven't received any largesse from Duke
10 Energy. But they are people who love that slough.
11 I have to confess to loving that slough. I walk
12 in that slough, I get -- I have an affinity with
13 that slough. That's a very special place.

14 I've known that slough all my life, and
15 in the last five years I've seen a renewal of
16 life, a new proliferation of life, I think mostly
17 due to the reduced use of that plant. And to the
18 sanctuary protections. But if that is going to
19 get protected, the sanctuary has to be involved,
20 the monitoring has to be in place, and regardless
21 of whether your plant, this plant gets expanded or
22 not, those things have to take place, because this
23 slough is a national treasure and it's something
24 that should be protected, and not exploited.

25 Thank you.

1 (Applause.)

2 HEARING OFFICER FAY: Greg Smestad.

3 MR. SMESTAD: Good morning. Again, my
4 name is Greg Smestad, from the Monterey Institute
5 of International Studies. I have two comments
6 that are very close to questions.

7 One is has the scientific method,
8 including an anonymous peer review process, been
9 used to assess both the biological effects and the
10 mitigation programs. In reading the documents,
11 which I have, I don't believe so. If not, they
12 should be, and I also believe that the feedback
13 and monitoring is needed, also verification. I
14 also believe that this is part of the scientific
15 process. You put forth the hypothesis, you test
16 it and you monitor it, and you revise.

17 So, again, I share the concerns of
18 others that believe that feedback, monitoring and
19 verification is an important part of this process.

20 The other comment and question is have
21 economic evaluation methods, such as those in the
22 literature, several reputable scientific journals,
23 I'll quote them, David Pimental's article in Bio-
24 Science, Volume 47, December 1997, page 749; and
25 Robert Castanza's article in Nature, Volume 387,

1 May 1997, been considered in looking at the
2 economic evaluation of the area.

3 I just want to read briefly that,
4 because I believe that it is relevant to this
5 discussion. They say here in this article in
6 Nature, "Pricing the Planet", we estimate that the
7 current margin eco-systems provide at least \$33
8 trillion worth of services annually in the U.S.
9 The majority of the value of these services we
10 could identify as currently outside the market
11 system in services such as draft regulation,
12 disturbance regulation, waste treatment, nutrient
13 cycling, about 63 percent of the estimated value
14 is contributed by marine systems. Most of this
15 comes from coastal systems.

16 So, again, I believe that these types of
17 evaluation, economic evaluations should be
18 considered in this analysis, and I don't believe
19 that they have.

20 Thank you.

21 (Applause.)

22 HEARING OFFICER FAY: Thank you.

23 Just to answer your first question, I
24 think the record does contain a quote, I believe
25 it was Peter Raimundi, who said that the protocol

1 for the 316B studies was extensively reviewed by
2 peers. Is that correct, Dr. Mayer?

3 DR. MAYER: Yeah.

4 HEARING OFFICER FAY: So --

5 DR. MAYER: At least the technical
6 working group believes that the protocol for the
7 studies was extensively given peer review.

8 HEARING OFFICER FAY: Roxanne Jordan.

9 MS. JORDAN: Hello. I'm Roxanne Jordan,
10 and I'm the Central Coast Sustainable Fishery
11 organizer for the Institute for Fisheries
12 Resources.

13 And I'm concerned that there has been
14 inadequate outreach by Duke Energy to the
15 commercial fishing interests in Moss Landing.
16 While the agreement to mitigate for loss of
17 productivity in Elkhorn Slough will benefit
18 fishermen, I am concerned that the commercial
19 fishing community was not consulted regarding
20 mitigation that will directly benefit them.

21 And Jim Stillwell mentioned previously
22 some areas that need to be addressed for
23 commercial fishermen, because they do have boats
24 in the harbor. And while I cannot advocate any
25 particular form of mitigation, I would encourage

1 that Duke Energy consider consulting with
2 commercial fishermen regarding how their needs and
3 concerns can be met.

4 And that's all I have to say.

5 HEARING OFFICER FAY: Thank you.

6 MS. JORDAN: Thanks.

7 HEARING OFFICER FAY: Okay. That
8 completes all the -- oh, we have some more? Ms.
9 Mendonca. Oh, you want to read -- how about that
10 remote mic? Why don't you stay where you are.
11 Could somebody help us out, grab the remote mic,
12 bring it up --

13 PUBLIC ADVISER MENDONCA: This is --

14 HEARING OFFICER FAY: Oh, all right.
15 She's all set.

16 PUBLIC ADVISER MENDONCA: My name is
17 Roberta Mendonca. I'm the Public Adviser at the
18 California Energy Commission.

19 On all public notices that go out, I
20 have an 800 telephone number, and people are
21 encouraged to contact my office if they want to
22 participate in a meeting like today. So I have
23 received some information from people like
24 yourselves that would prefer to be here but were
25 unable to be there, and will be either commenting

1 their name and phone number, or a segment of their
2 communication.

3 To begin with, a gentleman that's been
4 before you before, Lewis Calcano, who is a local
5 supervisor, was unable to be here today, and he
6 sent a letter fully urging support for the Duke
7 application for a permit to upgrade their Moss
8 Landing facility. And he reiterates that he's
9 very pleased to have Duke Energy as a corporate
10 neighbor, and sharing the vast responsibility for
11 maintaining and restoring the highest quality of
12 the sensitive and valuable resources so typical of
13 this part of Monterey County.

14 He stands behind the Elkhorn Slough
15 Foundation, ability to acquire, restore and manage
16 conservation and mitigation lands in the Elkhorn
17 watershed and to manage stewardship endowments
18 focused on the long term care of these properties.
19 He believes that the Elkhorn Slough Foundation
20 truly represents the community, and has
21 represented the community for a good many years.

22 In conclusion, he is urging you to adopt
23 this permit as proposed by Staff, and looks
24 forward to working with your board and Duke Energy
25 as it moves forward in the modernization and

1 environmental improvements of the Moss Landing
2 facility.

3 And then again, in reference to my 800
4 number, it has a message machine, and if people
5 didn't spell their name I'm probably going to
6 mispronounce it, but I'm also probably going to
7 misspell it. But I did receive a communication
8 from Dr. Sara Bhakti, S-a-r-a, B-h-a-k-t-i,
9 Bhakti, who expressed concerns about the Moss
10 Landing power plant.

11 I received a communication from Valerie
12 Lesheik, L-e-s-h-e-i-k, and she had received the
13 PMPD, and she was upset about how much was being
14 spent compared to the amount received in
15 mitigation and bio-loss. She believes that the
16 plant should be solar energy, and she plans to
17 submit a solar plan before the response deadline.

18 Lewis Robbins, R-o-b-b-i-n-s, is
19 concerned that the \$7 million is too low, and that
20 the slough will be ruined. And has asked to be
21 added to our e-mail list server, which we did do.

22 Andrea Perkins, P-e-r-k-i-n-s, concerned
23 about the Moss Landing.

24 Rachel Davis, D-a-v-i-s, concern over
25 Moss Landing.

1 Dr. Riskin, R-i-s-k-i-n, is interested
2 in the Elkhorn Slough and wants to see greater
3 mitigation.

4 Vivian Argel, A-r-g-e-l, concerns about
5 Moss Landing.

6 Karen Hidebreck, H-i-d-e-b-r-e-c-k,
7 concerns about Monterey Bay.

8 I also received several e-mails, which I
9 will docket. One came from Sara Ringler, R-i-n-g-
10 l-e-r. Basically she has four points. She
11 believes that there is no established or stated
12 need for the plant. And she recognizes that while
13 deregulation no longer requires that need be
14 established, it's still the role of governmental
15 agencies to ensure that a project such as this
16 project protects the public, the consumer, and
17 wildlife. She believes that the state has not
18 encouraged conservation or safer, cheaper
19 alternatives, and this should be a first step in
20 any energy plan.

21 She believes that the state should
22 ensure electricity is a basic necessity for all,
23 that there is not a negative coastal burden put on
24 the average consumer as the result of building
25 this plant, and she says given the above

1 realities, the loss on any marine species is
2 unacceptable no matter how it's mitigated.

3 And the final communication came from
4 Sue -- did I not spell that name for you? R-i-n-
5 g-l-e-r, was an e-mail.

6 And also an e-mail from Sue Pappalardo,
7 P-a-p-p-a-l-a-r-d-o. She also has concerns about
8 the impacts to the marine life in Elkhorn Slough,
9 and specifically the larvae, fish, fish eggs,
10 micro-organisms, and other life vital to the
11 marine food chain. She believes that not enough
12 studies have been done, and she's troubled that
13 due to the age of the Moss Landing facility it's
14 being grandfathered in, especially since it
15 affects one of the most environmentally sensitive
16 important areas in the county.

17 And she hopes that the result of her e-
18 mail, there will be a request for more studying of
19 the effects of this project.

20 PRESIDING MEMBER KEESE: We're going to
21 go to Duke next, but before that, Mr. Ogata. It's
22 in reference to a number of times on -- regarding
23 the monitoring requirement, that was in the PSA
24 and removed in the FSA. Could you enlighten us?

25 MR. OGATA: Actually, Chairman Keese, I

1 don't think I can. I don't have a good
2 recollection of that. I know that the FSA
3 contained a number of things. The errata FSA that
4 was filed shortly thereafter did take out a number
5 of things. From memory, I cannot tell you exactly
6 what those things were, but I can tell you the
7 reasons why those changes were made.

8 The Staff person, Dick Anderson, at the
9 time he wrote the FSA, believed that there were a
10 number of things, issues that were outstanding.
11 Subsequently, he had an opportunity to start --
12 well, not to start, but to rethink a lot of those
13 issues, and there was also some concern about some
14 of the -- the words that he used. He believed, in
15 rereading his testimony, that it did not
16 accurately reflect his expert opinion. So he did
17 make changes to a number of those things by taking
18 out some words and adding words.

19 It was probably unfortunate in that he
20 didn't have an opportunity to fully explain what
21 those changes were and why he made those changes.
22 It does, I concede that it doesn't look very good,
23 because a lot of those changes were made without
24 explanation. Unfortunately, because of the
25 timeframe, as many people here know, the biology

1 section was the last section that was prepared by
2 Staff, because of the timing of the different
3 reports that were coming in. And so he was under
4 some time pressure to make sure that his analysis
5 was done.

6 The way the Commission reviews
7 documents, a number of us review those documents,
8 as well, and so that takes additional time to
9 prepare the document in a form before it goes out
10 for public review. And I can't say for certain
11 that all of us had an opportunity to fully review
12 that testimony before it went out. So there were
13 a lot of changes that -- that had to be made that
14 are made. As you see we had errata today. So
15 those kinds of things are always picked up along
16 the way.

17 But unfortunately, it's a long way of
18 saying that, again, I cannot remember the
19 specifics about the monitoring and where it
20 occurred, and where it was taken out.

21 PRESIDING MEMBER KEESE: But you can
22 give us a letter indicating the answer to the
23 question?

24 MR. OGATA: If you would like us to
25 respond to that, certainly.

1 PRESIDING MEMBER KEESE: I -- yes, I
2 would.

3 And then as we turn to the Applicant, if
4 the Applicant is aware of any information
5 regarding this monitoring issue, or has comments,
6 I'd like to hear that specifically, also.

7 MR. ELLISON: Thank you, Chairman Keese.

8 I want to keep my comments fairly brief,
9 and at the same time I do want to address some of
10 the key issues that have been raised here this
11 morning.

12 What I propose to do, try and keep this
13 to 15 minutes or so, what I propose to do is to
14 address some of the specific concerns that were
15 raised by the agencies, particularly where they
16 involve questions about specific changes to the
17 PMPD, and give you what Duke's position is on
18 that.

19 Then I want to, in the interest of time,
20 address collectively the concerns that have been
21 raised by the environmental organizations and
22 members of the public. And I do want to address
23 specifically the concern about monitoring.

24 And in that regard, I would also like to
25 take five minutes or so to have Dr. Mayer, who is

1 Duke's representative on the technical working
2 group, describe the studies that have been done,
3 and describe what the results of those studies
4 were and how it relates to the mitigation package.

5 So with that overview, let me first of
6 all thank all of you for coming here today, and
7 thank all of you who have acknowledged Duke's
8 efforts to work with the various agencies. There
9 were a number of comments that were made about
10 Duke's efforts to try to be a good neighbor and to
11 resolve these issues in an appropriate way, based
12 on good science. And for those of you who
13 acknowledged that effort, I want to -- I want to
14 acknowledge your acknowledgment of that. Thank
15 you very much.

16 With respect to the Coastal Commission,
17 I want to -- to acknowledge and express my thank
18 you to Mr. Bowen for his statement that, although
19 there are concerns about the mitigation package
20 from the Coastal Commission, his acknowledgment
21 that it is the product of a valid technical
22 working group process and that it is based on good
23 science, we agree with that.

24 As to the question of whether the
25 Coastal Commission should be a permitting agency

1 or an advisory agency on the mitigation advisory
2 group, I'll leave that to the agencies to work
3 out. But I will -- I will point out that the
4 Coastal Commission's Executive Director, on July
5 13th, when the Coastal Commission comments were
6 adopted, addressed his Commission and -- and on
7 the tape of that presentation I think he made
8 quite clear that he was presenting to the Coastal
9 Commission the position that the Coastal
10 Commission's role was advisory. And we can -- we
11 can document that, if you wish.

12 With respect to the comments of the
13 Marine Sanctuary, again, thank you for
14 acknowledging our efforts to work with the Marine
15 Sanctuary on these issues. We have made a
16 commitment of the \$425,000 funding that was
17 referenced there. We have no objection to that
18 commitment being included as a condition of
19 certification, so that it is an enforceable
20 commitment.

21 With respect to the Moss Landing Harbor
22 District, again, I want to acknowledge your
23 statement about Duke being a good neighbor, and
24 support for the expansion. We will meet with you.
25 We definitely want to talk about your concerns.

1 The July 31st letter that was handed out today, we
2 are seeing for the first time. I'm not sure why
3 that happened. But in any event, we do want to
4 respond to it. We certainly would've responded to
5 it earlier if we had received it earlier. I don't
6 know what happened between July 31st and now.

7 With respect to the County of Monterey,
8 again, appreciate your acknowledgment of our
9 efforts. I think we've already talked about
10 transportation number six, and worked out the
11 concerns that were expressed there about prior to
12 commercial operation. Mr. Carney mentioned a
13 concern about who is on the advisory committee and
14 wanting to make sure that the County is on the
15 advisory committee.

16 HEARING OFFICER FAY: The County is.

17 MR. ELLISON: The County is on the
18 advisory committee.

19 HEARING OFFICER FAY: In the language in
20 the PMPD, Monterey County is listed.

21 MR. ELLISON: That's -- that's correct.

22 And I would refer everyone to page 192 of the
23 PMPD, which describes the advisory committee. And
24 just in case there are any other concerns about
25 it, let me -- let me just read that -- that

1 language, because a number of people expressed a
2 concern about that.

3 It's at the bottom, the bullet at the
4 bottom of page 192. The permitting agencies will
5 prescribe final project requirements to assure
6 funds are spent appropriately. As a part of this
7 process, a series of advisory team meetings will
8 be held to obtain advice from representatives of
9 California Coastal Commission; California
10 Department of Fish and Game; Monterey Bay National
11 Marine Sanctuary; Elkhorn Slough National
12 Estuarine Research Reserve; Monterey County;
13 Elkhorn Slough Foundation; and environmental
14 organizations.

15 And our understanding, Duke's
16 understanding is that the environmental
17 organizations referenced there at the end would be
18 people who expressed concerns here today. We
19 certainly would have no objection to any of you
20 who spoke, and who have laudably taken your time
21 out to express concerns about these issues, to be
22 on this advisory committee and to participate in
23 the selection of the appropriate mitigation
24 measures and use of these funds.

25 Okay. With that, let me, again in the

1 interest of time, let me turn to the environmental
2 organization comments, and the members of the
3 public who commented here today.

4 First of all, again, let me commend you
5 for your concern about the environment, for your
6 concern about the Elkhorn Slough, and the
7 Sanctuary. I think that's commendable, laudable.
8 It is a concern which we think this process is
9 intended to address.

10 There is a great deal of misinformation
11 about this project, some of which has been
12 repeated here today. Those of you who -- and I'm
13 not going to go point by point on what all that
14 is, although I do encourage you, if you -- if you
15 wish us to go point by point, we're happy to do
16 that. And we are all here to address any
17 questions that you may have after this is done,
18 but I don't think time allows me to do that now.

19 But let me just say that there is a
20 great deal of misinformation floating around out
21 there about the impacts of the project, about what
22 studies have been done and not been done, and
23 about what the mitigation measures are and how
24 they -- how they were arrived at.

25 And in a moment I'm going to ask Dr.

1 Mayer to describe briefly, for those of you who
2 haven't heard it before. In previous hearings
3 we've discussed this at great length, but for
4 those of you who haven't heard it before, I'm
5 going to ask Dr. Mayer to describe the studies
6 that have been done, to describe the technical
7 working group and the peer review process, and the
8 people that were involved in selection of -- of
9 the studies, and interpretation of the results and
10 the selection of the mitigation measures that came
11 out of that.

12 Let me say this, though, before I do
13 that. At the end of the day, I think there were
14 two sets of comments which I think are very
15 informed, and which basically go to questions of
16 -- of philosophy. And the two philosophical
17 questions that I think are embedded in a number of
18 these comments are these.

19 First of all, there is a question about
20 -- that the technical working group struggled with
21 at great length, about monitoring studies. And
22 here I want to respond specifically, Mr. Chairman,
23 to your concern. The question being, does it make
24 sense to spend a considerable amount of money on
25 doing monitoring studies where the best technical

1 experts available know that those studies will not
2 produce results that will identify the source of
3 any change that might be identified.

4 In other words, the studies might
5 identify a change in the environment, but because
6 of the complexity of the environment that we're
7 dealing with here, the consensus opinion was that
8 -- and let me stop right here and say there were a
9 whole bunch of studies that they agreed could be
10 done that would produce meaningful results, and
11 those studies were done, and Dr. Mayer is going to
12 describe that.

13 But with respect to a certain kind of
14 monitoring study on the entrainment effects, there
15 -- there was this consensus among the technical
16 working group that, although you could do the
17 studies, that you could not design a study that
18 would effectively identify whether the cause of a
19 change was the power plant or El Nino, or many,
20 many other potential causes.

21 And then the philosophical question that
22 they confronted was essentially this, and this is
23 one where reasonable minds can differ. But they
24 asked themselves the question, is it better for
25 the environment to take the money that these

1 studies would cost and instead of doing the
2 studies, put it into mitigation itself that you
3 know will produce some benefit for the
4 environment, as opposed to a study that will end
5 up on somebody's shelf somewhere.

6 Reasonable minds can differ about that.
7 I hear your comments about doing that kind of
8 monitoring study. I think it's still within the
9 ambit of the -- of the advisory committee and the
10 permitting agencies to decide to spend the money
11 that way, if they choose to want to do that. But
12 just so that you all understand, the basis of that
13 decision was essentially this judgment, this
14 philosophical judgment, that it's better to take
15 that money and actually improve the environment,
16 rather than produce a study which would not, in
17 their view, produce meaningful results.

18 The other philosophical issue goes to
19 this question of should we -- should the
20 permitting agencies pick now the specific
21 mitigation measures, as opposed to trusting this
22 advisory committee to make that selection. And
23 again, I think reasonable minds can differ on
24 that. I do want to emphasize, though, to you,
25 that -- that this trust us, who is the "us" that's

1 being trusted here. It's not Duke. I read a
2 moment ago that -- that list of the various people
3 that will make the decisions about how -- what
4 mitigation measures will be selected. And it
5 includes I think everybody that has expressed
6 concerns about this except Duke. Duke's not on
7 that list.

8 The -- so when you think about this
9 issue, think about it in that way. Would you want
10 to have these mitigation measures selected against
11 the criteria of mitigating as much as possible,
12 and being as linked to the power plant as -- as is
13 possible. I think that's a reasonable
14 requirement. Do you want to have the
15 environmental organizations, the Coastal
16 Commission, Department of Fish and Game, the
17 Energy Commission Staff, the Elkhorn Slough
18 Foundation, and all of those folks that are
19 identified on page 192, make that decision. Or
20 would you rather have the Commission make that
21 decision now.

22 And so that's, again, a philosophical
23 issue that people can -- can disagree about. But
24 I want to emphasize that -- that that's who's
25 going to make this decision, and the criteria that

1 they're going to make it against is linking it to
2 the power plant as much as possible and producing
3 the maximum environmental benefit that can be
4 produced, as possible.

5 And with that, Dr. Mayer, can I ask you
6 to take five minutes or so. And what I'd like you
7 to do is to describe the studies that were done,
8 because this project was -- was significantly
9 delayed precisely out of a concern of wait a
10 minute, before we go forward with this, let's
11 study the thermal plume, let's study the
12 entrainment, let's study the impingement. Those
13 studies were directed by a technical working group
14 that Dr. Mayer is going to describe, and then the
15 results of those studies have led to what you see
16 today.

17 So, Dr. Mayer.

18 DR. MAYER: Commissioner Keese and
19 Commissioners, my name is David Mayer. I'm a
20 consultant to Duke Energy, and a participant of
21 the technical working group that's been described
22 to you many times. And I have spoken to you
23 before in some of the testimony for this project.

24 There isn't time, and I wouldn't even
25 ask to take the time now to go through all the

1 studies and what we did. But I do want to give
2 both the flavor of what was done, and also take
3 the opportunity maybe to focus on some of the
4 specific issues of information we collected that
5 has yet -- could be clarified, and some of the
6 misunderstandings we have here today.

7 And I do want to apologize. I don't
8 know if the gentleman's still here, for
9 interrupting his testimony on the near shore
10 fishery. I do share Mr. Fay's frustration. I've
11 seen some newspaper article reports recently where
12 the plant's been attributed to some really gross
13 inaccuracies, and -- and I just want to make sure
14 that there's an opportunity to get some of that
15 information that we've found published in some
16 people's hands, who have these kinds of questions.

17 And secondly, I do want to really
18 commend the Commission for making the information
19 available. I think your Web site is one of the
20 most impressive out there in the state agency
21 circuits now, and the information is out. These
22 reports are out. I was impressed with the
23 workshops you organized and held, both here, to
24 answer these questions. I only wish they had been
25 better attended so we could've gotten our

1 information in the hands of people who have these
2 questions.

3 And I'll just describe our process
4 quickly. The technical working group is an entity
5 that was really initiated by the Regional Water
6 Quality Control Board, Central Coast Region.
7 Michael Thomas, their staff person, organized this
8 approach. And it came out of a experience that he
9 had recently in administering some of the permit
10 issues for Diablo Canyon power plant, not to bring
11 that into the context today.

12 But I want to say to you that there has
13 been many years, and I'll say beyond six right
14 now, that have gone into really working through
15 this kind of a process of bringing in independent
16 scientists on the regional board's behalf, and
17 other state agencies' behalf, to, one, obviously
18 create objectivity and scientific review in the
19 process, bring in opinions that are experience
20 based in the power industry, looking -- these are
21 independent scientists who have been involved in
22 looking at power plants elsewhere in California
23 along the coast, and I'll point to Pete Raimundi.

24 Dr. Pete Raimundi is a professor at UC
25 Santa Cruz. He's worked extensively as a

1 consultant to the California Coastal Commission on
2 a plant, San Onofre, in southern California. And
3 over that period of time, gained a great deal of
4 experience in how to look at power plant impacts,
5 both intake and discharge. So his experience came
6 into our technical working group.

7 Dr. Ray Calyea, who is a professor here
8 at Moss Landing Marine Lab, is certainly the --
9 the local, if not statewide expert in many of the
10 marine fishes that are involved with the power
11 plant here. Dr. Mike Foster, professor here at
12 Moss Landing Marine Laboratory, was an independent
13 scientist to the technical working group,
14 representing the Energy Commission and their
15 Staff, some of the questions that are both local
16 and specific.

17 California Department of Fish and Game
18 was represented by Deborah Johnston, I think who
19 is still here -- yes. And Deborah's agency has
20 had a lot of coastal experience in power plant
21 impacts, assessing impacts. How do you look at
22 the impacts, how do you design studies to detect
23 effects, and -- and more recently, how do you look
24 at mitigation of some of these potential effects.

25 The California Coastal Commission was

1 represented by Martin Bowen. I don't know if
2 Michael's still here or not. And -- and the
3 Energy Commission was represented by your Staff
4 biologist, Dick Anderson, on many occasions.

5 So the working group was composed -- and
6 myself, and Brian Walters, he's a scientist from
7 Duke, whose expertise is actually in fisheries and
8 water quality effects, specifically related to
9 power plants.

10 So what I wanted to say to you by that
11 litany was we had, I think, a really solid group
12 of scientists. They approached the problem
13 scientifically. They were asked how do we look at
14 this proposed project from the standpoint of the
15 intake and the discharge of this power plant. And
16 they had a lot to work with. This power plant has
17 not been unstudied. In fact, there were an
18 enormous number of studies, extensive, by most
19 people's description, of the Elkhorn Slough, of
20 the receding waters, of this plant as it's
21 operated since 1950.

22 So we have a long term record of this
23 facility operating. So even as we talk today
24 about some of these major changes that people have
25 noticed in Elkhorn Slough, up and down, all those

1 are in the context of this plant being here over
2 this nearly half a century, and operating still
3 with a healthy, exciting, some people say, eco-
4 system.

5 Some of the specific details. I'll just
6 go quickly between the two halves of the study.
7 We looked at it that way. There's the -- the
8 intake issues related to the drawing in of cooling
9 water for the power plant's condensing of the
10 steam from the generators, and the discharge of
11 some of that waste heat in the form of warmer
12 water going out into the Monterey Bay.

13 That goes out in the Monterey Bay, as
14 somebody has fairly accurately described, about
15 500 feet offshore, and about 50 feet of water.
16 The actual discharge point is a little bit off the
17 bottom, a little bit closer to 35 feet.

18 We've heard testimony on various
19 occasions. The -- this plume from the discharge
20 cooling water is a large volume, has a lot of
21 velocity, is directed vertically. There are two
22 large ports. There's a great deal of mixing, an
23 enormous amount of mixing, actually, before the
24 plume reaches the surface, this warmer water. And
25 then as the plume, because it's blowing, it begins

1 spreading and moving away from the point of
2 discharge. And, of course, the heat is
3 dissipating to the atmosphere. It's mixing. And
4 it's also being involved with the -- the
5 discharge, if you will, from Elkhorn Slough, which
6 is warmed even more than, on many occasions, the
7 power plant warms the cooling water goes through
8 its systems because of solar heating and the
9 shallows of the Elkhorn Slough on every high and
10 low tide exchange.

11 So we -- somebody asked earlier, how do
12 you know what the impacts are without studying.
13 Well, the way we typically do this, and that was
14 -- is how the committee approached the problem,
15 the technical working group committee approached
16 it here, was you look at what is the predicted
17 temperature of the discharge, and we have the
18 plume studies and it aided us in visualizing and
19 detailing this plume and its temperatures, where
20 the temperatures were going to go.

21 Dr. Foster, from here, was very key in
22 kind of making us deal with the discipline of
23 making geographical connection between the plume
24 and the habitat. Somebody else testified, or said
25 -- had a comment earlier, make sure that the

1 impact is associated geographically with where
2 some of these changes might occur.

3 So we mapped the plume in this, in a
4 predictive way, put it with its associated habitat
5 context on the beach, on the rocky habitat
6 associated with the breakwater in the Moss Landing
7 Harbor, and areas out in deeper areas. How do you
8 go from that information -- well, we know the
9 biology because there are many studies of both
10 this area specifically, and other, where -- so we
11 know what the species are. We go to literature
12 from laboratory thermal tongs test, for many of
13 these species. We go to other power plant sites
14 where these species have been studied in contact
15 with thermal discharges. And from those results,
16 we're able to make very sound scientific
17 decisions.

18 Before I go on to the intake side of it,
19 just let me kind of reiterate, I think, what Mr.
20 Ellison was saying to you, is that having decided
21 that, one, there were very little -- there's very
22 little potential for any thermal impacts because
23 of this rapid mixing. The low temperature of the
24 plume itself, and the tolerance of the species
25 that it might come in contact on the beach and the

1 breakwater, that in combination with that, and the
2 possibility of all these other influences, the
3 technical working group reached the conclusion
4 that there was very little potential impact, and
5 that trying to tease out or find those impacts by
6 studies in the environment could be extremely
7 expensive, and unproductive.

8 And that was not Duke's decision or
9 anybody else. It was the collective decision of a
10 lot of very well trained, experienced scientists
11 in conducting monitored studies of thermal plumes.

12 On the intake side of it, and looking at
13 the harbor, one thing we've wrestled with in
14 looking at the, sort of the eco-system of what
15 might be impacted by the power plant operations,
16 the withdrawal of cooling water, we looked at the
17 hydrology of it. So there was a great deal of
18 discussion and consideration, in fact, and
19 somebody also made a comment this morning, it is
20 the junction of several major hydrological
21 systems, the Elkhorn Slough, the Monterey Bay, the
22 harbor, and it all moves very dynamically with
23 tide.

24 So we spent a lot of time wrestling with
25 the hydrology of the situation, the hydraulics.

1 We coupled that with the previous biological
2 studies of the power plant, asking the same
3 questions, what species were entrained, what
4 species were impinged, and they made predictions
5 in those studies. And we were looking mainly to
6 update their findings, because the findings were
7 relatively solid, with the aspect of the passage
8 of time.

9 And one of the things we considered in
10 making the decision to implement these new set of
11 studies of the intake system and of species being
12 drawn in by the plant, was the fact that there are
13 very large changes taking place in the Elkhorn
14 Slough as a result of restoration. Opening the
15 tidal channels, increasing the volume of flow.
16 And I think Dr. Oliver, who was here earlier, said
17 earlier last week at another hearing that, you
18 know,, the change in the volume exchange of the
19 slough is something 40 to 50 percent. That's a
20 huge change. We're dealing with a system that is
21 undergoing an enormous change and is continuing to
22 undergo enormous change.

23 The question for the -- the working
24 group, can we rely on these previous studies for a
25 study of the power plant entrainment effects, or

1 should we look at them again because of the
2 possibility of the species and their densities
3 have changed over this period of time, because of
4 these large changes in the Elkhorn Slough and its
5 hydrology.

6 The decision was that changes were large
7 enough, the possibility the species had, in fact,
8 changed over that period of time, that it was the
9 group's recommendation to go out to start these
10 studies. The studies took 12 months, actually it
11 ran a little bit longer than that. There were
12 samples that were collected throughout the harbor,
13 the slough, Elkhorn Slough, up into the slough,
14 especially if safety would allow, and out into the
15 Monterey Bay. And these were collected over a 12
16 month period of time.

17 The organisms going into the power
18 plant, which was operating, units 6 and 7 were
19 operating during the period of study, were sampled
20 weekly, and each time we went out each week they
21 were sampled on a 24 hour basis.

22 There were -- it was an intensive
23 sampling program. The results were, as we
24 processed them through the lab, and I want
25 everybody to sort of visualize what we were

1 sorting. Most of the things we were picking out
2 of these samples were about three to four
3 millimeters long. And many of them, in a small
4 sample, a lot of sorting, and then putting names
5 on them was even more difficult and tedious.

6 So the work was completed, but it was
7 completed on a quarterly basis, and continuously
8 given to the technical working group. We ran
9 statistics, trial runs, proposed -- potential
10 assessments of these impacts that might result
11 from the final processing the data, and got their
12 continuous feedback. So it was an adaptive
13 program where we interacted with the independent
14 scientists to continually update as to these
15 questions.

16 Now, I -- now I will speak to the
17 monitoring, just again underscore Mr. Ellison.
18 But we did not sort out eco-system issues, because
19 -- on some sort of an arbitrary basis, that they
20 were too difficult to do, or anything along those
21 lines. We focused on fish, larval fish, and they
22 are different than zoe plankton, as an example,
23 because somebody mentioned zoe plankton today.
24 Zoe plankton are organisms, have exo-skeletons,
25 they're hard bodied, and many studies from many

1 power plants have demonstrated that they have a
2 very high survival rate going through power
3 plants. They're just -- they're armored, if you
4 will, for going through systems.

5 Larval fish don't have that armoring.
6 They're more sensitive, soft bodied, to going
7 through plant passage, and there is a mortality
8 that occurs as they go through these power plant
9 cooling water systems. However, the estimates of
10 mortalities from other studies, we didn't do one
11 in this case, indicate that the survival rate can
12 be anywhere from 30 to 70 percent.

13 So in this case, what we did for the
14 purpose of assessing impacts of potential -- the
15 potential impacts of the project, was assume that
16 all of them died, as a very conservative element
17 advised by the technical working group, to make
18 our impact assessment the most conservative
19 possible. We also -- there were issues about
20 concerning the -- the dilution of densities of
21 these organisms that induced another large
22 conservative element into our estimates of
23 impacts.

24 The species that we collected, it did
25 not surprise us, because previous studies on the

1 same thing were very -- very highly associated
2 with the Elkhorn Slough and the harbor habitats.
3 The gentleman who was concerned earlier about the
4 near shore life of fishery, those fish had -- in
5 fact, 95 percent of our fish were not of any
6 commercial importance. Or recreational
7 importance, for that matter, either. The -- the
8 very large number of them, near the 70 percent
9 level, were species of Goebes which live in the
10 holes or burrows of organisms that are in the mud
11 flats of Elkhorn Slough. Dr. Calyea believes
12 they're sort of an ecological dead end. They
13 don't find them very often in any other fishes'
14 stomach, so they're not a major link in a food
15 chain anyplace. That's his opinion. I think
16 that's worth considering.

17 But the majority of the fish that are
18 entrained by the power plant are these Goebe
19 species, very small fish, that live in close
20 association with the Elkhorn Slough and the harbor
21 habitats. That's good news for commercial
22 fisheries. If you move the intake to an offshore
23 location, you're going to start intaking other
24 species, rockfish and others, from the Monterey
25 Bay, that are of commercial importance.

1 So that's -- that kind of directed the
2 working group's looks and theories about how to
3 mitigate for these changes. Now, I want to make
4 one final comment on this 13 percent that has been
5 promulgated throughout all of our discussions
6 here.

7 The 13 percent is an average of these
8 very small fish, the larvae, as compared -- that
9 the plant takes in, as compared to the number that
10 are out there. But it's based on those species
11 that are entrained, and only those species that
12 are entrained in the power plant. And the reason
13 I want to say that is for the -- there's 70
14 percent more fish, species of fish in the Elkhorn
15 Slough that are entrained in the power plant.

16 So, somebody made the point earlier,
17 when we talk about mitigating the loss of these 13
18 percent, based on those fish that are entrained,
19 it also includes benefit in the form of habitat
20 restoration of the marsh, all those other species
21 that aren't entrained.

22 HEARING OFFICER FAY: That are not
23 entrained?

24 DR. MAYER: That are not entrained.

25 HEARING OFFICER FAY: So the 70 percent

1 you referred to are the species that are not.

2 DR. MAYER: Not entrained. Right. So
3 if you took a species list of the Elkhorn Slough,
4 and I'll just use 100 species right now, of fish.
5 We found that we entrained about 34 species. Some
6 of the -- the reason I say about is because some
7 of these are taxocategories, they're not
8 definitive species, they could be one or two
9 species in a single category.

10 So many of the species out using the
11 Elkhorn Slough, as people pointed out, nursery
12 feeding areas, you know, general habitat, open
13 space habitat, are not involved with the
14 entrainment figure that we're talking about, 13
15 percent.

16 So when we're creating new marsh, or
17 restoring marsh, or protecting marsh that we
18 created or restored by upland control, or some of
19 the other proposals that might be on the table,
20 all of that benefit accrues to those other species
21 that aren't, in fact, affected by the power plant,
22 including some others that were discussed here
23 today, such as clams, crabs, and others,
24 invertebrate forms that are living in the slough.

25 Which reminds me of one final point.,

1 The things that come into the power plant, we're
2 not talking about the disappearance of mass here.
3 It goes back out, and all this organic matter
4 still stays in the trophic system. Somebody said
5 well, they're not used to eating cooked forms. I
6 don't know about that. These aren't really cooked
7 forms, but the material stays in the -- the
8 system. Most of the plankton material has no
9 effect going through the power plant, and retains
10 its importance in the trophic food web, the
11 Elkhorn Slough, the harbor, and the Monterey Bay.
12 And that's been demonstrated by many other power
13 plant studies of these kinds of effects.

14 I think that kind of covers the bases.
15 If -- I want to come back to the final point of
16 monitoring. Again, as with the offshore discharge
17 and potential thermal effects, the technical
18 working group did, as Mr. Ellison suggested,
19 looked carefully at the possibilities.
20 Suggestions were for monitoring originally, in the
21 FSA -- PSA, and then after discussions and
22 reconsideration, decided that based on good
23 thoughts, rational thoughts by Dr. Raimundi,
24 particularly, because this is his area of
25 expertise is designing monitoring studies in

1 marine environments, that there's just no way
2 you're going to find either the impact or the
3 benefit of mitigation on larval fish in the
4 Elkhorn Slough, or any other higher forms. And we
5 can talk about that later.

6 There's -- there are issues of
7 statistics on how would you design these studies,
8 but we've done enough of it to know that the
9 possibility of detecting these small effects that
10 we're talking about would not statistically be
11 achievable. Doesn't mean nobody's arguing that
12 they aren't theoretically occurring, but the
13 expenditure of monitoring money, and these are
14 pretty large dollar amounts that we were
15 suggesting here today, is much better spent, and
16 that was the consensus of the group, on actually
17 building habitat that would create benefit, rather
18 than trying to find the benefit.

19 HEARING OFFICER FAY: Dr. Mayer, I'd
20 like to just clarify something. Am I correct in
21 assuming that -- that while in any system you
22 could study what is going on in the system, that
23 your concerns about the difficulties of monitoring
24 have to do with monitoring to determine the impact
25 of the power plant intake, and thermal discharge.

1 So -- so that is the point that is hard to tease
2 out; correct?

3 DR. MAYER: That's the point it's hard
4 -- and the flip side of that coin is finding
5 benefit from any mitigating activities associated.
6 Now, that actually might be easier because the
7 mitigation, as I said earlier, is a much broader
8 effect on the slough than the power plant is. So
9 it -- assuming that you have some very large
10 change associated with your mitigation activity,
11 such as opening tide channels and things like
12 that, that could produce an effect. But whether
13 or not you can say that that has offset some
14 effect that you've then detected through a
15 monitoring program of the power plant, that
16 wouldn't be possible to tease out.

17 And that was really, I think, the
18 purpose of the philosophy, as Mr. Ellison said, of
19 the philosophical decision of the group, was to
20 rather than -- because we were convinced by the
21 conservativeness of our estimate of impact, we
22 appreciated the ecological arguments of the
23 linkage between restoring, creating, or protecting
24 marsh, and expanding productivity in the system
25 was -- was a, sort of a self apparent fulfilling

1 argument. And it would be better to put our
2 efforts and money and time into that, rather than
3 trying to trace the performance of our decision.

4 I think that's --

5 MS. PRAUL: I have just one
6 clarification. We've got this 13 percent number
7 in the newspaper --

8 DR. MAYER: Yes.

9 MS. PRAUL: -- and maybe you could just
10 simply state, as I understand our proposed
11 decision, it's 13 percent of eight species out of
12 97. Could you state what --

13 DR. MAYER: Yeah. It's --

14 MS. PRAUL: -- what is an accurate --

15 DR. MAYER: -- I'm sorry for the
16 confusion of these numbers.

17 MS. PRAUL: -- way to say this?

18 DR. MAYER: The -- it's -- there were
19 eight -- of all the species in the Elkhorn Slough,
20 species of fish, sorry. Of all the species of
21 fish in the Elkhorn Slough, the power plant
22 entrained about 34 percent of those species. Of
23 the species entrained by the power plant, eight of
24 them made up 95 percent of all the larvae that
25 were entrained by the power plant. Less than five

1 percent of them were larvae from any species that
2 had some sort of a recreational or commercial
3 importance.

4 The 13 percent is a number that you --
5 if you look at the errata, particularly, for the
6 FSA, you can see the calculation there. But they
7 took those eight species that I just spoke of,
8 which make up 95 percent of all the larvae, and
9 they took the fraction. Each one of those species
10 had a fraction computed for it, for that species.
11 In other words, how -- we estimated how many
12 larvae of that species were out in the slough,
13 harbor, or bay, were actually a surrogate of the
14 bay, a piece that we used in our estimates. And
15 we computed how many were going through of that --
16 of that species were going through the power
17 plant, and we divided that. We get a fraction.
18 There were some other mathematical things that we
19 do, because we're incorporating this over an
20 annual cycle of that species, and we come up with
21 a number, which is a fractional removal for each
22 species.

23 And in the errata, what you'll see is
24 those species are listed, and their fractional
25 loss or removal by the power plant, and then down

1 at the bottom those numbers are added up, and
2 that's how you get the 13 percent. And that 13
3 percent, then, made good sense, made sense to me.
4 It was actually, I think, Doctor -- to his credit,
5 his suggestion that we could take that, because if
6 you assume that there's a stability of population
7 dynamics in here, that that converts rather
8 cleanly and nicely to thinking about how much
9 habitat would be necessary to support adult fish
10 that would produce those number of larvae.

11 HEARING OFFICER FAY: Doctor who?

12 DR. MAYER: Yes. Oh, Dr. Raimundi.

13 HEARING OFFICER FAY: Okay.

14 DR. MAYER: Yes.

15 HEARING OFFICER FAY: Was the
16 connection.

17 DR. MAYER: Yes.

18 HEARING OFFICER FAY: Okay.

19 MS. PRAUL: And just to restate, of the
20 34 percent of the species that even were
21 identified, only five percent of those had any
22 value for commercial --

23 DR. MAYER: For commercial or --

24 MS. PRAUL: -- or recreational --

25 DR. MAYER: -- recreational importance.

1 Right.

2 MS. PRAUL: And of the total that you
3 discovered, 95 percent of them were of these eight
4 --

5 DR. MAYER: Were accounted for by these
6 eight species.

7 MS. PRAUL: -- species.

8 DR. MAYER: And these eight species are
9 primarily of the Goebe type fish that I described,
10 the adults get maybe two or three inches long.
11 There were some blennis in there that get a little
12 bit bigger, but --

13 HEARING OFFICER FAY: And the five
14 percent of total species that were commercial,
15 that is not a volumetric measure; is that correct?

16 DR. MAYER: No, that's just a numeric.

17 HEARING OFFICER FAY: Okay.

18 DR. MAYER: Yeah, that's the other thing
19 about the newspaper article. It talked about 13
20 percent biomass, the most recent -- it's not
21 biomass at all. It's strictly a numerical count
22 of larvae. And we didn't account for -- some of
23 these fish grow up to very, very large, you know,
24 larvae could grow up to be a rockfish, which would
25 be a very large fish, as opposed to most of the

1 ones that we're talking about grow up to be
2 Goebes, which are very small fish, two or three
3 inches long.

4 So it's not a biomass issue. It's --
5 it's strictly a number, a numerical issue.

6 HEARING OFFICER FAY: So just to clear
7 my mind. While five percent of all the entrained
8 species identified by you -- of the species
9 identified by you --

10 DR. MAYER: Of the species entrained.

11 HEARING OFFICER FAY: Of the species
12 entrained --

13 DR. MAYER: Right.

14 HEARING OFFICER FAY: -- you found that
15 five percent of those were -- were commercial
16 fish. Is that correct?

17 DR. MAYER: Had -- had some recreational
18 or commercial value.

19 HEARING OFFICER FAY: Some -- or
20 commercial value.

21 DR. MAYER: Right.

22 HEARING OFFICER FAY: But that that did
23 not represent a loss or entrainment of five
24 percent of commercial fish in the area.

25 DR. MAYER: No. No. In fact, most of

1 the fish of commercial or recreational importance
2 are not found except for different stages in life.
3 Maybe -- they're mostly found offshore. They're
4 oceanic species, out of the Monterey Bay and along
5 the coast of California, and they're not what you
6 think of -- they're not permanent residents of the
7 Elkhorn Slough or the harbor. And that's -- those
8 are the species that we got the most of, so.

9 And if we were to make some sort of an
10 assessment of their -- we would have to, let's
11 take -- let's take an anchovy, as an example. The
12 anchovies move in and out of the slough. We think
13 that their larvae come in and they find, in the
14 upper reaches of the slough, a warm, you know,
15 environment filled with different kinds of -- they
16 grow -- they can be very abundant in the Elkhorn
17 Slough. But the majority, vast majority of the
18 anchovy population is really far offshore in
19 grounds, fishing grounds that go the entire length
20 of California and north, Oregon and Washington.

21 We did not make that comparison to how
22 many were the power plant taking out of what was
23 the -- the stock of anchovy. They were treated
24 just as if all of the anchovy in the world existed
25 right here in this -- the source water volume that

1 we used in our assessment.

2 MS. PRAUL: So, I'm still -- I'm just
3 trying to understand this. So we -- we -- the
4 group could conclude that there isn't a
5 significant effect at the entrainment level on the
6 recreation or commercial fisheries.

7 DR. MAYER: Correct.

8 MS. PRAUL: And, as I understand what
9 you said before, in terms of the outfall, the --
10 due to the dilution and any number of other
11 things, there was -- the technical group found
12 there was no significant impact of any kind, but
13 not on commercial or recreational fisheries.

14 DR. MAYER: Especially not fisheries.

15 MS. PRAUL: Especially not.

16 DR. MAYER: Especially not fisheries.

17 MS. PRAUL: I'm just trying to restate
18 what's in the evidentiary record so I understand
19 it.

20 DR. MAYER: Okay. Yes. I -- in the --
21 and the conclusions of the technical working group
22 based on the thermal plume predictions, which are
23 showing that the discharge temperatures of the
24 plume will meet the numerical limits established
25 by the Regional Water Quality Control Board for

1 shoreline contact, in other words, less than four
2 degrees above ambient. And the reason the
3 Regional Board set that limit is that they know
4 that limit to be protective of the resources on
5 the shore. So that the discharge is -- is
6 protected, if you will, the effects of the
7 discharge are protected against by the water
8 quality standards established by the NPDES permit.

9 But we also know from laboratory
10 evidence that those temperatures are also, when
11 you look at them in the lab, are protected, and
12 that's -- has been a part of how the standards
13 were established. That information.

14 MR. ELLISON: Thank you, Dr. Mayer.

15 We've gone well beyond the 15 minutes
16 that I promised. I want to apologize for that.
17 We -- on the one hand, we want to respond to any
18 questions that anybody may have, and if you have
19 any additional questions, we'd be happy to stick
20 around afterwards and field them. At the same
21 time, we respect the fact that you've already
22 taken a lot of time out of your day to come here.

23 So I was going to address the issue of
24 notice and community involvement. I'm not going
25 to do that. Let me just -- just say that Duke has

1 a Web site, we've had open houses, we've tried to
2 do a lot of things to reach out to people in the
3 community. And if anybody has any questions about
4 that, please, you know, come and see us off line.

5 And the Commission has a Public Adviser
6 whose sole job is to ensure community involvement
7 in these proceedings, as well, and I'm sure that
8 she would also entertain any questions about their
9 activities.

10 Thank you.

11 PRESIDING MEMBER KEESE: One more
12 question.

13 MS. PRAUL: This could go to both the
14 Staff and the Applicant. I really heard a middle
15 ground in the testimony, or the comments today,
16 between the -- the specific measures being stated
17 in the decision, and -- and just having a sort of
18 open ended \$7 million with an advisory group. And
19 it's clear we have an objective stated. But
20 within the timeframe of what's remaining in this
21 proceeding, what are the procedural options and
22 the substantive ways that we could move toward a
23 specification of performance standards in this
24 decision, and -- and perhaps -- criteria.

25 MS. GAFFNEY: Could I make one -- just a

1 super brief comment following up on that?

2 PRESIDING MEMBER KEESE: Not from there,
3 though. Just -- let's hold a second.

4 MS. GAFFNEY: It's sort of --

5 PRESIDING MEMBER KEESE: Let's wait for
6 the Applicant here to --

7 MS. GAFFNEY: Okay. I'm not going to
8 the substance of the question. I -- I really
9 think it would be helpful.

10 PRESIDING MEMBER KEESE: Okay.

11 MS. GAFFNEY: The Regional Board, at
12 their meeting last week, asked their staff to go
13 back and look at more specificity in the
14 mitigation plan. So I would encourage, you know,
15 if you're going in that direction, to work closely
16 with the Regional Board, because their staff has
17 already been directed to do that over the course
18 of the next month.

19 PRESIDING MEMBER KEESE: And identify
20 yourself for the record.

21 MS. GAFFNEY: I'm sorry. Kaitilin
22 Gaffney, The Center for Marine Conservation.

23 PRESIDING MEMBER KEESE: The Applicant
24 was going to perhaps answer?

25 MR. HOFFMAN: Yes. My name is Wayne

1 Hoffman, I'm the Environmental Manager for Duke
2 Energy.

3 I was going to make the same comment
4 that Kaitilin just made. But I also wanted to say
5 that, well, in that context, we will be working
6 with the regional staff, and I assume perhaps with
7 some of the Energy Commission staff who were on
8 the technical working group, to outline in
9 somewhat greater detail, based on the management
10 plans which back the assumptions behind the
11 mitigation package.

12 And I think one of the things that has
13 not come out today, and I'd point out to the
14 audience, that hearings, both before the Energy
15 Commission and last week before the Water Board,
16 had the experts who -- actually, some of whom
17 reside in this very building, that's one of the
18 ironies of today, that we've had a lot of people
19 speak about this subject of mitigation and these
20 issues of impacts who have come from outside, and
21 many of the experts actually reside here, work
22 here, sit on the technical working group, are
23 advisers to the Water Board, and unfortunately
24 none of them made the same presentations that they
25 have in past hearings, virtually all of which are

1 extremely supportive of this mitigation process
2 and the findings and the studies. And I think
3 that has not been emphasized enough.

4 But nevertheless, this group will assist
5 in using the plans. And I'll point out that the
6 Coastal Commission, Monterey County, the National
7 Estuarine Reserve, and Elkhorn Slough, and various
8 other organizations in this community were
9 extremely involved in the Elkhorn Slough
10 Management Plan, which was adopted back in the
11 late eighties, early nineties, the Morro Cojo
12 Management Plan in 1995, the Elkhorn Slough
13 Watershed Conservation Study, all of which are
14 considered by the technical working group and the
15 people who are working on the mitigation plan to
16 be essential documentation backing up the approach
17 to the specific projects and programs which will
18 be used as this process moves forth, and
19 identifying and creating a detailed mitigation
20 plan.

21 And I'll point out that it will be those
22 documents and other experience that people --
23 other experience of the people in this community,
24 which will form the basis of anything which is
25 provided prior to the Water Board hearing. I

1 believe it's on October 27th. And to the extent
2 that that can be put together, and I've actually
3 spoken to some folks who work here in the lab, who
4 will be interested in assisting in that process,
5 who've worked on these issues.

6 So I think that -- I don't know the
7 extent to which this process can feed in to the
8 final decision on the 25th, but I would hope that
9 a further elucidation of -- of the mitigation
10 program could be drawn from this work that's
11 already been done. But I think it will be useful.

12 MS. PRAUL: I would just like to add
13 that to the extent that this draft decision, which
14 it was a draft, has raised a controversy related
15 to reference to Section 3 of -- of the existing
16 plan. If people can provide specific suggestions
17 of how we would be more -- more precise there, in
18 what you would believe is acceptable or not
19 acceptable, without prejudging the advisory
20 group's role here in the plan, you know, we would
21 certainly entertain those.

22 And the specific kinds of things we've
23 heard here today are, you know, geographic
24 proximity and planktonic productivity, and, you
25 know, we're not the ones to -- to make those

1 decisions as to those are the right or the wrongs
2 things. But we don't want the decision to unduly
3 not reflect those kinds of things.

4 So we need, you know, more help if -- if
5 you can give it to us, in the course of the next,
6 you know, ten to fifteen days.

7 MR. OGATA: Excuse me, Mr. Fay. I just
8 wanted to say one thing about Staff. We
9 appreciate Ms. Gaffney's comment. It was a
10 reminder, because our staff has attended that
11 meeting, and so he was aware of that, as well.
12 And also, Mr. Hoffman's comments.

13 Mr. Anderson has been intending all
14 along to try to convene this group. He was going
15 to try to do it early this month, but because he's
16 working on four or five other siting cases right
17 now he wasn't able to do that. But I believe he
18 is still intending to try to convene this group or
19 start the process going by the end of this month,
20 or early next month, because he is aware that
21 there is a lot of concern and interest about it.

22 So Staff was not intending to wait until
23 the certification, and I'll go back and remind
24 him, and make sure that he will do that and
25 coordinate it with the Water Board. But that has

1 been the intent, I know, for -- for a month, at
2 least.

3 HEARING OFFICER FAY: I just wanted to
4 make a comment about the concept of using a
5 technical working group, and I give full credit to
6 Michael Thomas for -- for initiating it in this
7 case. And I understand it is already being used
8 in the Morro Bay proposed project, even though the
9 application hasn't been filed yet. But the
10 technical working group has been working on -- on
11 the scientific aspects of that project.

12 And I think this is the best direction
13 for a commission like ours to go, especially on --
14 in a sensitive environment like the coast, where
15 we let the science, through a group of the best
16 scientists with the most knowledge about this
17 coast and power plants' effects on the coast,
18 actually decide how the studies should be made.
19 They don't decide what the answer's going to be.
20 They just decide what the parameters of the
21 studies are going to be. The answers are whatever
22 they are when they come out.

23 I think it's a healthy approach, and
24 it's been very informative in this case, and I
25 look forward to it informing the Morro Bay case,

1 as well.

2 Again, it inserts more science and less
3 policy making in our process, with the end result,
4 hopefully, that the environment will be better
5 protected.

6 And with that in mind, I just want to
7 emphasize that in spite of all that we've heard
8 about power outages -- and I have to say there's a
9 tremendous amount of pressure on the Energy
10 Commission to respond to that, I read today that
11 they expect increased and more rolling blackouts
12 next summer -- notwithstanding all that, it hasn't
13 affected at all the pace of this case in examining
14 the environment, the time that's been necessary
15 has been taken to be sure that we get as much high
16 quality information as possible to mitigate the
17 impacts of this project.

18 And I anticipate that that will
19 continue, that the Energy Commission's concern is
20 siting power plants, but only in ways that are
21 compatible with the environment.

22 Commissioner Keese.

23 PRESIDING MEMBER KEESE: Thank you. And
24 I just want to make two points.

25 One is the nature of the independence of

1 this proceeding, and what you have to understand
2 is that my staff, for the purposes of this
3 hearing, are these two people. That's not my
4 staff. They are as independent as the people in
5 the audience. So when we asked for help in trying
6 to come up with the specific language, we're
7 asking for you and our staff, and the Applicant,
8 to help us out in that regard. Because I can't
9 sit down with my staff and work out the language
10 that you would like to see on what these specific
11 projects are. They can submit it, and we do it in
12 an open hearing like this, and then we take
13 comment.

14 So we welcome your -- your input in
15 trying to do that, because we don't feel that up
16 here we have the expertise to define what will
17 help the Slough. And -- and we're not sure that
18 you want to rely just on my staff, or just on the
19 Applicant, or just on this. So if you can help us
20 with those general parameters, I think that would
21 be wonderful.

22 The other thing is it's -- it's really
23 unfortunate that some people were not aware of
24 this process. The Energy Commission has probably
25 the most -- the most active outreach program to

1 attempt to involve the community, and -- and if we
2 listed the meetings that Ms. Mendonca has attended
3 and the groups that she has contacted, it would
4 take an hour. And she is -- I think she believes
5 she half lives here in Monterey to work on this
6 power plant.

7 We would appreciate -- I think she would
8 appreciate, and I would certainly appreciate any
9 suggestions you have as to how we might do this
10 better. But she has addressed civic groups, she -
11 - Duke has had obligations to involve the
12 community. I know she has spoken to many
13 environmental groups here. It's just unfortunate
14 that we missed some, because the input you give us
15 is important. It would just have been nice if it
16 could have been involved at the early stages so
17 that those issues could have been dealt with
18 specifically in our workshops, which we have very
19 many of.

20 Did you --

21 MS. GAFFNEY: Yeah, I have a very
22 specific suggestion on that. Again, Kaitilin
23 Gaffney, Center for Marine Conservation.

24 One of the initial concerns that we
25 raised in this process was a process concern. And

1 that related to one of the workshops that was held
2 where the mitigation plan was actually negotiated,
3 and I think it would have been incredibly useful
4 to have those of us in the environmental community
5 at that workshop, raising these concerns at that
6 time, so that we could either have been convinced
7 that we were wrong and accept the plan, or had our
8 concerns incorporated into the plan.

9 That workshop was held three days after
10 the document, an 80 page document that included
11 the mitigation, the basis of the mitigation, was
12 released. So it was released on a Friday, the
13 workshop I believe was on a Tuesday or a
14 Wednesday. The notice went on the Web on, you
15 know, Friday that a workshop was going to be held
16 a couple days later on an 80 page document.

17 I think, you know, being more thoughtful
18 in terms of recognizing that the public may need a
19 little more time than that if they're going to
20 participate meaningfully in the process would be a
21 really important first step.

22 PRESIDING MEMBER KEESE: Thank you.

23 Ms. Mendonca, do you want to say -- I
24 don't --

25 PUBLIC ADVISER MENDONCA: It's very,

1 very brief. But I have not always been on
2 crutches, and you are correct. I have been to
3 this community many times. I am open to any
4 increased suggestions. I am PAO, stands for
5 Public Adviser's Office, at energy.state.ca.gov.
6 And any honest, thought out suggestions for what
7 the Public Adviser can do to make your community
8 more involved, I would welcome.

9 Thank you.

10 PRESIDING MEMBER KEESE: Thank you.

11 HEARING OFFICER FAY: Okay. All right.

12 That concludes our taking of comments today, as
13 convenience. It does not conclude our taking
14 comments on the project. So anybody that has
15 additional comments, or you wish to say something
16 further about what you've heard today, you're
17 welcome to write to the Energy Commission docket,
18 and Ms. Mendonca can help you make contact with
19 the Energy Commission in a number of ways. And
20 the comment period is open until 3:00 p.m. on
21 September 28th.

22 We anticipate that the full Commission
23 will rule on this proposal on October 25th at its
24 regular Business Meeting in Sacramento.

25 PRESIDING MEMBER KEESE: Do we have a

1 final question here?

2 HEARING OFFICER FAY: You have to be on
3 mic, otherwise your remarks are lost.

4 MR. ELLWANGER: Jack Ellwanger, Pelican
5 Network.

6 Can it issue the permit or the final
7 decision in lieu of the water control permit
8 that's going to be --

9 PRESIDING MEMBER KEESE: Do you want a
10 simple answer?

11 MR. ELLWANGER: -- decided on the 27th?

12 PRESIDING MEMBER KEESE: Yes.

13 HEARING OFFICER FAY: Okay. Thank you
14 very much. We are adjourned.

15 (Thereupon, the Conference was
16 concluded at 12:55 p.m.)

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CERTIFICATE OF REPORTER

I, DEBI BAKER, an Electronic Reporter,
do hereby certify that I am a disinterested person
herein; that I recorded the foregoing California
Energy Commission Conference; that it was
thereafter transcribed into typewriting.

I further certify that I am not of
counsel or attorney for any of the parties to said
Conference, nor in any way interested in the
outcome of said Conference.

IN WITNESS WHEREOF, I have hereunto set
my hand this 29th day of September, 2000.

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